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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 458

**MILTON COVERDALE, SHERIFF AND EX-OFFICIO
TAX COLLECTOR,**

Appellant,

versus

**ARKANSAS-LOUISIANA PIPE LINE COMPANY,
Appellee.**

**ORIGINAL BRIEF ON BEHALF
OF APPELLANT.**

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ORIGINAL BRIEF ON BEHALF OF APPELLANT.

OPINIONS BELOW.

The opinion rendered by a statutory court of three judges is reported in 20 F. Supp., 676. (See also opinions in case of Union Sulphur Company v. Reid, Sheriff, et al., 17 F. Supp., 27, and original opinion on the question of the issuance of a preliminary injunction in case of Arkansas-Louisiana Pipe Line Company v. Coverdale, Sheriff, 17 F. Supp., 34, and on rehearing, 17 F. Supp., 36, including dissenting opinion, 17 F. Supp., 38).

APPELLATE JURISDICTION.

Paragraph I of Rule 12 has been complied with.

STATEMENT OF THE CASE.

Appellee, the Arkansas-Louisiana Pipe Line Company, a foreign corporation doing business in Louisiana, filed suit against the Sheriff and Ex-officio Tax Collector for the Parish of Ouachita, Louisiana, to enjoin said Sheriff and Ex-officio Tax Collector from collecting from appellee the tax levied by Act No. 6 of the Louisiana Legislature for the year 1932, (Copy of Act No. 6 of 1932 appears in the addenda to this brief at page i), alleging that said Statute violated both the Constitution of the United States and the Constitution of Louisiana in many respects, (R. 1). After hearing, the district court of three judges issued a preliminary injunction as prayed for, (R. 14). Appellant applied for a rehearing which was granted, (R. 18, 19).

Rehearing—Dissenting Opinion.

On rehearing, the Court reversed its original ruling and held Act 6 of 1932 violated neither the Constitution of the United States nor the Constitution of Louisiana, (R. 20), but held that the tax involved, insofar as the Arkansas-Louisiana Pipe Line Company, appellee herein, is concerned, is a direct burden on interstate commerce, and issued a preliminary injunction, (R. 20-23). This decision was by a divided court, United States Circuit Judge Joseph C. Hutcheson dissenting from the majority opinion rendered by

United States District Judges Dawkins and Borah, (R. 23). Judge Hutcheson, in a written opinion, (R. 23, 24, 25), held the tax involved was not a direct burden on interstate commerce and that the Arkansas-Louisiana Pipe Line Company was not even entitled to a preliminary injunction (R. 23, 24, 25). He did not sit in the case when it was first heard on the question of the issuance of a preliminary injunction (R. 14, 15, 16, 17).

A district court of three judges, United States Circuit Judge Rufus E. Foster and District Judges Dawkins and Borah, then heard the case on the question of the issuance of the permanent injunction, (R. 124). This three-judge court made the preliminary injunction issued by a divided court, permanent (R. 124-133). From this ruling the Sheriff and Tax Collector has appealed to this Court.

Operations of Appellee in Louisiana.

The Arkansas-Louisiana Pipe Line Company is engaged in the business in Louisiana of producing and gathering natural gas from its own wells, (R. 77-121, 125). It gathers this gas through a field-gathering system, (R. 77-121), and conveys it to a central point on the edge of the gas fields, (R. 77-121) to its Munce Station, (R. 77-121). Here it is converted from an unmerchantable product into a merchantable product, (R. 77-121, 126). It also buys at its Munce Station, gas which is produced and gathered by others, (R. 77-121-125). This purchased gas is also changed from an unmerchantable into a merchantable product at the Munce Station in the manner shown in the testimony, (R. 77-121, 126).

Compressors.

The Arkansas-Louisiana Pipe Line Company, at its Munce Station, uses ten compressors to produce the gas from the wells, and draw it to its Munce Station, (R. 77-121). The gas, after reaching the Munce Station through the field-gathering lines, and after it is changed into a merchantable product, (R. 77-121, 126), is compressed by said compressors and by this operation is loaded into a twenty-inch high pressure pipe line belonging to appellee herein, and by the use of said twenty-inch main, most of the gas loaded into it is carried to points outside of Louisiana. The terminus of the twenty-inch main pipeline in Louisiana is at the Munce Station.

The ten compressors referred to in the preceding paragraph require mechanical energy to operate them, (R. 77-121).

Manufactures, Generates or Produces Mechanical Power or Energy in Louisiana.

The Arkansas-Louisiana Pipe Line Company has elected to obtain the mechanical power necessary to operate the ten compressors from ten four cylinder 1000 horsepower Cooper Bessemer internal combustion gas engines, (R. 77-121). The mechanical power is produced, generated or manufactured by converting the heat energy in natural gas into mechanical energy. (R. 77-121).

Permanent Situs in Louisiana.

The internal combustion gas engines referred to in the preceding paragraph are bolted down to a concrete foundation at the Munce Station, and have a permanent situs in Louisiana. (R. 77-121).

The mechanical energy, after being generated, manufactured or produced, is transmitted to the compressors by rods (R. 77-121), where it is consumed by the compressors. (R. 77-121).

The appellee also operates two other internal combustion gas engines, (R. 2, 3, 50), with 250 horsepower capacity each, that are bolted down to a concrete base at the Munce Station and are used to convert the heat energy in gas into mechanical energy, (R. 2, 3, 50). The mechanical energy, after being generated, produced or manufactured, is transmitted to an electric generator, which consumes the mechanical energy, and converts it into electrical energy (R. 50, 2, 3, 93). The electrical energy so generated is used to light buildings, operate machine shops and air compressors (R. 3).

Act Six of 1932.

Act 6 of 1932, involved herein, levies what is known as the Power Tax of Louisiana. Section 1 of the Statute levies, in addition to other taxes of every kind imposed by law, an excise, license or privilege tax upon every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity for heat, light or power, in the State of Louisiana, which tax is measured by the gross receipts from the sale of electricity so manufactured or generated in this State, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution or resale.

Section 2 of said Statute levies, in addition to all other taxes, an excise, license, or privilege tax upon every

person, firm, corporation or association of persons engaged in the business of selling electricity not manufactured or generated by him or it, for heat, light, or power, in the State of Louisiana, and the said tax is measured by the gross receipts from the sale of such electricity, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution or resale.

Section 3 of said Statute levies, in addition to all other taxes imposed by law, upon every person, firm, corporation or association of persons, an excise, license or privilege tax for the privilege of generating or manufacturing power not subject to the tax imposed by Sections 1 and 2 of said Act, based upon the horsepower capacity of the machinery or apparatus known as "prime mover" or "prime movers" operated by such person, firm, corporation or association of persons, for the purpose of producing power. Section 3 further provides that any power that is secured from a person, firm, corporation or association of persons, subject to the tax imposed by Sections 1 or 2 of the Act, shall not be liable for the tax imposed by Section 3.

Appellant's Position.

Appellant contends that the operations of the Arkansas-Louisiana Pipe Line Company described herein where it generates, manufactures or produces mechanical energy or power in Louisiana by converting the heat energy in natural gas into mechanical energy by using ten four cylinder 1000 horsepower internal combustion gas engines, and two 250 horsepower internal combustion gas engines; which engines are technically known as "prime movers", are

intrastate and local operations, and subject it to the tax levied by Section 3 of Act 6 of 1932, for the privilege of producing, manufacturing or generating this mechanical energy or power, irrespective of the fact that the mechanical power or energy from ten of the prime movers is transmitted or used by ten compressors that are used by appellee to produce gas and load it into a twenty-inch main pipeline through which part of the gas is carried to other states and the mechanical energy from the two 250 horsepower engines is used to operate electric generators which generate electrical energy used by appellee to operate lights for its building, to operate air compressors and its machine shop. In other words, appellant contends there is a difference between the manufacturing, generation or production of energy or power, and its ultimate transmission and use, and that the tax on the person for the privilege of manufacturing, generating or producing mechanical power or energy by means of internal combustion gas engines, bolted down to concrete, therefore, having a permanent situs in Louisiana, is not a direct burden on the interstate commerce carried on by appellee, that is, transporting gas out of the State of Louisiana into other states.

, The tax levied by Section 3 of Act 6 of 1932, is measured by the rated horsepower capacity of the internal combustion gas engines used by appellee to generate, manufacture or produce mechanical energy or power. The amount of tax, therefore, is constant, and is neither increased or decreased by the amount of gas transported by appellee across state lines. It is an excise, license or privilege tax on the person for the privilege of manufacturing, producing or generating mechanical power or energy, and is not on the use of the energy or power.

SUMMARY OF APPELLANT'S TESTIMONY.

A. B. Singletary, Jr. (R. pp. 77-89, 93-98):

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the Louisiana State University in 1932, majoring in engineering. I am thoroughly familiar with the make-up and operation of internal combustion engines, including internal combustion gas engines, technically known as prime movers. I am also familiar with all phases of operation and construction of compressor units, used in compressing gas, and am also familiar with the various methods of transmitting mechanical energy after it has been manufactured.

I have on two occasions visited the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipeline Company located at Sterlington, Louisiana, and have carefully examined all the machinery and equipment situated on the site of the said "Munce Compressor Station", including the system of meters, cooling system, separators, and other equipment referred to herein.

The document introduced in evidence by appellant, marked "Exhibit A" for the purpose of identification (R. p. 91), is a photograph showing the same type of equipment used by the Arkansas-Louisiana Pipeline Company at its "Munce Compressor Station". On said photograph (R. p. 91), are shown three separate and distinct units. Marked by Roman Numeral III is the internal combustion gas engine unit; marked by Roman Numeral I is the compressor unit; and marked by Roman Numeral II is the power transmission unit. All of these units are identical

with the units owned and operated by the Arkansas-Louisiana Pipeline Company at its "Munce Compressor Station", with the exception that the said units at the "Munce Compressor Station" are larger, that is, the internal combustion gas engine units are larger, the compressor units are larger, and, of course, the power transmission units are larger to take care of the increased mechanical power which is generated and manufactured by the internal combustion gas engine units and which is transmitted through the power transmission units to the compressor units which use or consume said mechanical power.

On said photograph (R. p. 91), marked "Exhibit A" for the purpose of identification, I have detailed the lettering and legend of the principal parts that make up the internal combustion gas engine unit, the parts making up the power transmission unit and the parts making up the compressor unit. Each of these units is separate and distinct insofar as its duties and functions are concerned.

The internal combustion gas engine unit marked by Roman Numeral III, on said photograph (R. p. 91), is a unit separate and distinct in itself and complete in itself. It is bolted down to a concrete foundation at the "Munce Compressor Station" and has a permanent situs at said station, in the Parish of Ouachita, State of Louisiana.

This internal combustion gas engine unit is known as a "prime mover" and is used in generating and manufacturing mechanical power. By the use of said internal combustion gas engine unit, heat energy, which is contained in the natural gas used as fuel, is changed into mechanical energy. This changing of heat energy of natural gas into

mechanical energy is a manufacturing process and takes place in the following manner:

As the engine piston marked M, on said photograph, marked "Exhibit A" for the purpose of identification, moves from the position marked L to the position marked L', in the engine cylinder, a charge of natural gas and air is drawn into the engine cylinder through the gas intake valve marked O. On the return of the engine piston to the position marked L, this charge of gas and air is compressed, and just before reaching the point marked L, is ignited by an electric spark. The subsequent burning of this charge of gas and air in the engine cylinder forces the engine piston marked M back to the position marked L'; this is the stroke of the piston wherein the heat energy contained in the natural gas is converted into mechanical energy and this mechanical energy which has been imparted to the piston is transmitted by the piston rod marked K to the point of power take-off marked G. On the next stroke of the engine piston from the point marked L' to the point marked L, the burned gases, resulting from the burning of the charge of gas and air, are expelled from the engine cylinder through the exhaust valve marked N. From this point a similar cycle of operations occurs on the opposite side of the piston marked M. In the engine cylinder, marked I, two similar cycles of operations occurs as above described for the engine cylinder marked I', each power stroke of the piston in each cylinder imparting mechanical power to the piston rod marked K, henceforth to the point of power take-off marked G. The function of the large fly-wheel marked F is simply to smooth the power impulses imparted by the piston, thereby giving an even or steady motion to the entire internal combustion gas engine unit.

The mechanical energy generated and manufactured by the internal combustion gas engine unit is a new and distinct product, of value commercially, and is capable of transmission and use in industry and can be used to operate any sort or type of unit requiring mechanical power.

The operation of the above described internal combustion gas engine unit, which generates and manufactures mechanical energy, is entirely independent and separate from the operation of the transmission unit shown in said photograph (R. p. 91), and marked by Roman Numeral II, and is also entirely independent and separate from the operation of the compressor unit shown in said photograph (R. p. 91), and marked by Roman Numeral I.

Marked by Roman Numeral II, on said photograph (R. p. 91), is shown the power transmission unit. The function of this unit is to transmit the mechanical power, generated and manufactured by the internal combustion gas engine unit, from the point of power take-off, marked G on said photograph, to the compressor unit marked Roman Numeral I, which unit uses or consumes the mechanical energy manufactured by the internal combustion gas engine unit.

Mechanical power, such as is manufactured by the above described internal combustion gas engine unit, could be transmitted to the compressor unit which uses it by any of the common means of power transmission, such as, belting, chains, shafting, etc.

Marked by Roman Numeral I, on said photograph marked "Exhibit A" for purpose of identification (R. p. 91),

is shown the compressor unit, which unit uses the mechanical energy or power generated and manufactured by the internal combustion gas engine unit after said mechanical energy or power has been transmitted to it by the above described power transmission unit. This compressor unit performs a dual purpose: It draws gas from the nearby wells through a system of feeder lines in the gas fields, and after drawing the gas from the wells, compresses it and changes the condition of the gas from one pressure to a higher pressure thereby allowing the gas to be delivered into the main pipeline of the Arkansas-Louisiana Pipeline Company as withdrawals are made at the opposite end of the line. This suction and compression of gas takes place in the compressor unit in the following manner:

The mechanical energy obtained from the internal combustion gas engine unit, through the power transmission unit, is in the form of a forward and backward motion. This forward and backward motion causes the compressor piston marked C in the photograph (R. p. 91), to move from the position marked B to the position marked B' in the compressor cylinder. When the compressor piston marked C moves from the position marked B to the position marked B', a suction is created in that part of the compressor cylinder marked B which suction draws the gas from the feeder lines of the field gathering system into the compressor cylinder. The return of the compressor piston from the point marked B' to the point marked B compresses this gas in the compressor cylinder to a higher pressure and said gas is delivered through the gas outlet marked D into a pipe leading to the cooling system at the "Munce Compressor Station". A similar cycle

of suction and compression occurs on the opposite side of the compressor piston in the compressor cylinder marked B'.

Mechanical power or energy is necessary to the operation of any compressor unit.

There are three common methods of manufacturing mechanical power or energy which is necessary to operate compressor units. First, the method used at the "Munce Compressor Station", whereby an internal combustion gas engine unit is used to convert heat energy of natural gas into mechanical power or energy; second, the use of an electric motor which converts or manufactures electrical energy into mechanical energy; third, the use of a steam engine which converts or manufactures heat energy of steam into mechanical energy. In each case a new and distinct form of energy results from a manufacturing process; that is, changing one type of energy into mechanical energy and in each case this new product is capable of transmission and use in industry.

With the equipment appearing in said photograph (R. p. 91), the Arkansas-Louisiana Pipeline Company is doing three things; first, by the use of the internal combustion gas engine unit, marked Roman Numeral III, it is changing heat energy contained in the natural gas used as fuel, into mechanical energy, which is manufacturing. This manufacturing process is intrastate in character and is comparable and similar in every detail in this respect to other plants in Louisiana manufacturing power, such as electric power plants, etc. Second, by the use of the transmission unit, marked Roman Numeral II, it is transmitting

said mechanical energy, after said mechanical energy has been produced or manufactured. Third, by the use of the compressor unit, marked Roman Numeral I, it is using mechanical energy after it has been manufactured and transmitted.

The word "power", as used by engineers, indicates energy under human control and available for doing work. The principal sources of power are the muscular energy of men and animal; the kinetic energy of the winds and streams; the potential energy of waters at high levels, of the tides and waves, the heat of the earth and sun; and heat energy derived from the combustion of fuels. The change of one form of energy into another form of energy through the medium of an engine, or other type of prime mover, is manufacturing. The heat energy contained in fuels is one form of energy and the mechanical energy resulting from the combustion of fuels in an internal combustion engine is another form of energy having entirely different properties from the heat energy of fuels. This mechanical energy resulting from the combustion of fuels in an internal combustion engine is capable of measurement by the use of formulas recognized by engineers and the unit of measurement is called horsepower. The horsepower of internal combustion gas engine units, such as involved in the present suit, and used by the Arkansas-Louisiana Pipeline Company, at its "Munce Compressor Station", is measured in the following manner:

The internal combustion gas engine unit is first run under no-load, that is, only a quantity of natural gas and air is admitted to the engine cylinder necessary to run

the engine at its normal speed without any connected load. At this condition of no-load, an indicator card is taken at each combustion chamber of the engine from which the mean effective pressure for each combustion chamber is computed, and from this an average mean effective pressure is computed for all combustion chambers. Having the effective area of the engine piston in square inches, the length of stroke of the engine piston in feet and the number of revolutions per minute, the indicated horsepower of the engine at no-load is computed by substituting the above values in the formula:

$$\text{I.H.P.} = \frac{A \times P \times S \times N}{33,000} \times C$$

Where: I.H.P. = Indicated horsepower

A = Effective area of the engine piston in square inches

P = Average mean effective pressure in pounds per square inch

S = Length of stroke of piston in feet

N = Number of power strokes per minute

C = Number of combustion chambers

The engine is next run under full load; that is, all the load the engine will stand without the speed of the engine falling off below a certain point. The same procedure, as above described, is then followed and the indicated horsepower again computed. The actual brake horsepower of the engine is then the difference between the horsepower computed for full-load and for no-load. Before any internal combustion engine is sold, tests are run by the manufacturer to determine what the maximum brake horsepower of said engine is at normal speed and the manufacturer

owned by other companies, which gather gas from wells owned by such other companies and delivered to said central point, is metered at said central point for the purpose of determining the amount of money due said companies by the Arkansas-Louisiana Pipeline Company for the gas purchased. This gas purchased from other companies, at the central point marked "Munce Metering Station" on said map, after it is gathered from the wells in said system of feeder or gathering lines, is supposed to be merchantable gas, that is, it should contain no water or gasoline in either liquid or vaporous state, but this gas does contain this water and natural gasoline, and in such condition is not merchantable. At the point marked "Separator", on said map (R. p. 92), prior to the passage of the gas through the meters at the point marked "Munce Metering Station", on said map, are found separators, used for the purpose of removing this water and natural gasoline. Only one of these separators is shown on said map and marked "Separator". However, at the time I visited the plant, called the "Munce Compressor Station", I was shown such a separator installed in each field-gathering line leading to the metering station, by the Superintendent in charge of the Munce Compressor Station. These separators were installed some fifteen or twenty feet from the meters, marked "Munce Metering Station" on said map (R. p. 92). These separators are so constructed so as to retard the velocity of flow of the gas, and consist of a large steel vessel, in some cases, equipped with "Baffles". The gas enters the vessel about half-way up from the bottom and leaves at the top, and because of the large size of the vessel, as compared to the line in which the gas enters, the velocity of flow of the gas is greatly diminished, and it is this

diminution in the velocity of the flow of the gas, which causes the water and natural gasoline vapor contained in the gas, to settle to the bottom of the vessel or separator, where it can be blown out when a sufficient quantity has accumulated. This is the first step taken at the "Munce Compressor Station" to change the unmerchantable gas to merchantable gas.

The gas, after passing through the metering station, shown on said map (R. p. 92), enters the three large lines, shown on said map as "Lines Connecting Metering Station With Headers", and from these lines the gas goes into two lines marked "Headers" on said map. The gas, in entering the "Headers" again has its velocity of flow retarded, and more water and natural gasoline settles to the bottom of the Headers, where it can be blown out. This is the second step taken by the appellee at the "Munce Compressor Station" to change the gas from an unmerchantable product to a merchantable product. After leaving the "Headers", the gas reaches the compressor units, shown on said map (R. p. 92), as the "Munce Compressor Station". The action of the compressor units in compressing the gas raises its temperature from about 78 Degrees to 225 Degrees F. The hot gas, upon leaving the compressor units, flows to the unit marked, "Coolers" on said map, where the temperature of the gas is reduced from 225 Degrees to about 80 Degrees F. It is necessary that the temperature of this gas be reduced for the following reasons:

1. To reduce the velocity of the gas, thereby making it possible to load a larger volume of gas into the 20-inch interstate line. (Charles Law states that with constant pressure, the volume of a gas varies with its absolute temperature).

2. The preventing of the hot gasses from corroding the pipe line.

3. To prevent the hot gases from melting the insulation on the outside of the pipeline.

4. By cooling the gas to prevent expanding and contracting of the main pipe line, thereby eliminating danger of the line breaking or causing leaks.

5. To further condense and remove the water vapor and natural gasoline contained in the gas, which is another step in an effort to make the gas merchantable.

After leaving the Coolers, the gas then passes through a Scrubber located just ahead of the unit marked "Check Meter" on said map (R. p. 92), which Scrubber removes the remaining water and natural gasoline from the gas. The installation of this Scrubber was found necessary because the other processes named herein were not removing all of the water and natural gasoline from the gas. The gas then passes through the unit marked, "Check Meter" on said map (R. p. 92), where the quantity to be loaded into the main pipe line is measured. After being measured in the Check Meter, the gas is then loaded into the main 20-inch pipeline, marked "Main 20-Inch pipeline" on said map (R. p. 92).

Thus, we find a very intricate system of field-gathering lines, metering stations, Separators, Headers, Cooling Towers, Check Meters and Scrubbers, through which the gas handled by the Arkansas-Louisiana Pipeline Company must pass before it is finally loaded into the main 20-inch interstate line by the compressor units for transportation into Texas and Arkansas (R. p. 92).

The term "Munce Compressor Station" which is used by the Arkansas-Louisiana Pipeline Company to refer to its properties at Sterlington, Louisiana, and which term I naturally used herein, is a "misnomer" because at this plant are done more things than the mere compressing of natural gas. First, by the action of these compressor units, gas wells, which would normally not be able to produce the quantity of gas allotted each well by the Louisiana Department of Conservation, are made to produce their maximum allotment. Second, gas which would otherwise be unmerchantable is made merchantable by the use of compressor units coupled with separators, cooling system and scrubbers. Third, by the use of internal combustion gas engine units, the Arkansas-Louisiana Pipeline Company is manufacturing mechanical power or energy, a product having a distinct commercial value. And fourth, by the use of transmission units, mechanical power or energy is transmitted to its place of consumption.

I am familiar with the operation of the Ten (10) four cylinder Cooper Bessemer Internal Combustion engines owned and operated by the Arkansas-Louisiana Pipeline Company, appellee herein, at its Munce Station (R. p. 2), referred to in this litigation, and I am also familiar with the operation of the two (2) electric generators propelled by gas burning Internal Combustion engines used to furnish electrical energy for lighting the buildings at the said Munce Station (R. p. 2), and that none of said equipment and machinery is stand-by equipment; that all of said equipment is operated approximately the same number of hours per year, and none of it is owned and operated as stand-by equipment, by appellee; that none of said equipment is used only in case of emergency; that all of

then gives a brake horsepower rating to said engine not to exceed the brake horsepower the engine is proven capable of manufacturing or producing.

The brake horsepower of internal combustion gas engine units, such as used by the Arkansas-Louisiana Pipeline Company, is determined solely by reference to the internal combustion gas engine unit. The power transmission unit and the compressor unit have nothing whatever to do with the determination of said brake horsepower. In other words, the brake horsepower rating of the internal combustion gas engine units is the amount of power that is generated or manufactured by changing the heat energy of the fuel, natural gas, into mechanical energy.

Prior to the discovery of electricity, the principal uses of mechanical power, manufactured by internal combustion engines, were for driving shafting, pumps, compressors, hoists, and the like. Since the discovery of electricity, it has often been found more economical to manufacture mechanical energy at one place and then convert this mechanical energy into electrical energy. The electrical energy is then transmitted over wires to the place mechanical power or energy is needed. In such a case, some form of natural energy, such as the heat energy of fuels or the potential energy of water at high levels is, by the use of a prime mover, converted or manufactured into mechanical energy and the mechanical energy converted or manufactured by the use of electric generators into electrical energy and the electrical energy transmitted over wires to the point where the mechanical energy is needed. The electrical energy is then converted into mechanical energy by the use of electric motors.

There are many instances, however, in present day engineering where mechanical energy is transmitted long distances through rods. In such cases, through the medium of internal combustion engines, usually gas or gasoline engines, heat energy is manufactured into mechanical energy. This mechanical energy is transmitted through rods for long distances where it is finally used to operate pumps, compressors, and other mechanical units that require mechanical energy for operation. A good example of this is in the oil fields in Caddo Parish, Louisiana. In said fields, where oil companies own numerous wells which require pumping, and which wells do not flow of their own accord, the company will, at some central location, establish an internal combustion gas engine unit operating on the same principle as the internal combustion gas engine units owned and operated by the Arkansas-Louisiana Pipeline Company at the "Munce Compressor Station". Through the medium of this internal combustion engine unit, heat energy is converted into mechanical energy. The mechanical energy, manufactured by the engine, is then transmitted, from the point of power take-off of the engine, first from the engine to a large wheel and from said large wheel to several long rods which are connected to pumping units at the oil wells. These pumping units are often located as far as one-half mile from the engine manufacturing the mechanical power. Many wells can thus be pumped by the mechanical power manufactured by one internal combustion engine.

The point I am making is that the method of operation at the "Munce Compressor Station" is similar to the operation in the Caddo field, above referred to. While the mechanical energy or power is not transmitted in exactly the same manner, the medium of transmission in each case

is rods and the principle involved is identical. In other words, the internal combustion gas engine unit, technically known as the prime mover, which is permanently fixed to concrete at the "Munce Compressor Station", manufactures and generates mechanical power by changing heat energy into mechanical energy. Said mechanical energy or power is, through the medium of rods, transmitted or carried to the compressor unit, and operates said compressor unit. The compressor unit could be at a point a far distance from the internal combustion gas engine unit, and under such condition the transmission rods would necessarily have to be of sufficient length to reach the compressor, or the same power, or mechanical energy, could be used to operate several compressor units, or a pump, or any other machinery requiring mechanical power or energy.

If the internal combustion gas engine unit, known as the prime mover, was situated in Louisiana, and bolted down to concrete in Louisiana, say for example, at the "Munce Compressor Station", and the compressor unit was situated in the State of Mississippi or Alabama, and through a medium of rods, the mechanical energy and power generated and manufactured by the internal combustion gas engine unit, was transmitted and conveyed to said compressors located in Mississippi or Alabama, the transmission of said mechanical energy or power through the rods would be across the State lines and would be interstate commerce. The generation or manufacturing of the mechanical energy or power, however, would be local in character. In other words, the same situation would exist, in principle, as if the internal combustion gas engine units were connected to electric generators, which generated elec-

trical energy and said electrical energy was transmitted through a system of wires to the States of Mississippi or Alabama and used by an electric motor to operate a compressor.

The mechanical energy or power generated and manufactured by the internal combustion gas engine units at the "Munce Compressor Station" could very readily and very easily be used to operate an electric generator instead of a compressor, by merely attaching a generator where it could utilize the mechanical energy or power rather than the compressor. Then, the situation would be that heat energy is manufactured into another product, namely, mechanical energy or power, and this product would, in turn, be manufactured into electrical energy.

The manufacture and generation of mechanical power is one thing, and the consumption or use of that power is another, and the transmission of that mechanical energy or power to the point of consumption is a thing distinct from its manufacture or generation and its consumption. In other words, at the "Munce Compressor Station" there is, first, the manufacture or generation of mechanical power. The next step is its transmission, and the next step is its consumption or use. These three steps are entirely separate and distinct, and have no connection other than, before the mechanical energy or power is transmitted, it must be manufactured or generated, and before it can be consumed or used, it must be manufactured or generated, and transmitted from its place of manufacture or generation to the place where it is to be utilized.

The document introduced by appellant, and marked Exhibit "B", for the purpose of identification (R. p. 92),

is a copy of a map furnished me by the Arkansas-Louisiana Pipeline Company. Said map shows the field-gathering lines which connect with the gas wells owned by the Arkansas-Louisiana Pipeline Company, which are used for the purpose of gathering the gas from the place of severance from the ground, and collecting it and carrying it to the site of the "Munce Compressor Station". Also, shown on said map (R. p. 92), in symbols, are the Munce Compressor Station, the Separators, the Cooler, Check Meter and other equipment referred to herein, as well as the terminus of the 20-inch main pipeline into which the gas is loaded and is started on its interstate journey to Texas and Arkansas.

Shown on said map (R. p. 92), are the field-gathering lines in the Monroe and Richland Gas Fields, connected to wells owned by the Arkansas-Louisiana Pipeline Company. This system of gathering lines is made up of small lines leading out to the various wells owned by said appellee, and is the means by which the gas is gathered up and carried to the edge of the producing properties, where it is treated, measured, compressed, and loaded into the interstate carrier, as described elsewhere in this testimony.

As explained in the testimony of W. H. Buckley (R. p. 74), offered by appellee herein, the operation of the compressor units at the Munce Compressor Station are necessary from the viewpoint of the production of the gas from wells, and the utilization of the allowable production of such wells, as fixed by the Louisiana Department of Conservation, for the following reasons (R. p. 74): .

Some of the wells delivering gas into the field-gathering lines have lower pressure than others, and were

all of the wells allowed to flow under their own pressure into the field-gathering lines, the low pressure wells would not be able to produce, and by use of the compressor units, which draws the gas out of the field-gathering lines, the pressure in the field-gathering lines is lowered to such an extent that all of the wells can be regulated to produce their allowable production, as fixed by the Louisiana Department of Conservation.

At the points marked "Terminus of other Field Gathering Lines", on said map (R. p. 92), are connected similar field-gathering lines which deliver gas purchased by the Arkansas-Louisiana Pipeline Company from owners of other wells. These other field-gathering lines, although not shown on said map, perform the same function as the lines of the Arkansas-Louisiana Pipeline Company, that is, they gather the gas from the various oil wells and deliver the gas to a central point on the edge of the gas producing properties, where it is treated, metered, compressed, cooled, check metered and loaded into the interstate carrier.

After the gas has been gathered by the field-gathering lines and delivered to the central point on the edge of the producing properties, which is called the Munce Compressor Station, it then passes through the metering stations at said central point, and is metered. The gas belonging to appellee, produced from appellee's wells, and gathered into appellee's field-gathering system, and brought to said central point, known as the "Munce Compressor Station", is metered at said central point in order that appellee might know the amount of gas that is delivered into the interstate main at the central point, produced by appellee's wells. The other field-gathering systems,

said equipment is used in manufacturing mechanical power and is used approximately the same number of hours per year, as is shown by the testimony of appellee's witnesses.

I am in direct charge of the administration of the provisions of Act 6 of 1932, as amended, and Act 25 of the Second Extra Session of 1935, as amended by Act 5 of the Fourth Extra Session of 1935. It has been the universal policy in administering said Statute to allow exemptions from the tax on the ground that the equipment is stand-by equipment only in such cases where the equipment is maintained and used solely and only in the case of failure of the equipment ordinarily used to manufacture power.

The internal combustion gas engine unit, the transmission unit, and the compressor unit, as shown in said Exhibit "A" (R. p. 91), are the same in principle, and are in every respect similar to the internal combustion gas engine units, transmission units, and compressor units, located at the Munce Compressor Station, involved herein, with the exception that the internal combustion gas engine units, transmission units, and the compressor units at the Munce Station are larger, and the horse power rating or horse power capacity of the internal combustion gas engine units at the Munce Station is greater than the horse power capacity of the internal combustion gas engine unit shown in Exhibit "A". The transmission of mechanical energy is identical at the said Munce Station with the Exhibit shown in Exhibit "A", and the compressor units are identical at the Munce Station with the compressor unit shown in Exhibit "A", with the exceptions herein above referred to, that is, all three separate and distinct units are larger at

the Munce Station than the three separate and distinct units shown in said Exhibit "A".

T. W. Johnson, witness for appellee, makes the following statement (R. pp. 41-42):

"- - - that the compressors described and employed at the Munce Compressor Station form an integral part of the pipe line through which natural gas is transported, and the engines used in connection with such compressors are used solely and only to facilitate the movement of natural gas through the pipe lines."

The compressor unit, marked unit No. "1" on Exhibit "A" (R. p. 91), is not an integral part of the pipe line, and is used not only to compress the gas and load it into appellee's twenty-inch main at the Munce Station, but is used for other purposes as set out elsewhere in my testimony. The internal combustion gas engine unit, marked internal combustion gas engine unit No. "3" on Exhibit "A" (R. p. 91), is used solely and only for the purpose of manufacturing mechanical energy by converting heat energy contained in natural gas into mechanical energy, which mechanical energy, in turn, is transmitted to the point of use through the medium of transmission rods, marked transmission unit on Exhibit "A", (R. p. 91), to the compressor unit, the point of consumption of the mechanical energy.

The said Johnson further states that (R. p. 42):

"Because of the physical design, assembly and type of equipment employed, the energy created by the operation of the engines in use is not susceptible of transmission over any considerable distance and can

be used only for the purposes intended or the transmission of the natural gas transported, through the lines of which the compressors form an integral part and the energy created for these reasons cannot be considered to have any commercial value independently of the operation described."

The mechanical energy, after it has been manufactured, is capable of transmission for great distances, and in many cases, is so transmitted (R. pp. 110-114).

Mechanical energy is a distinct article of commerce, capable of measurement and sale, and is, at times, measured and sold; the mechanical energy manufactured by the internal combustion gas engine units at the said Munce Station has a commercial value independent of the operation of the compressor units which use said power, just as would the manufacture of electrical energy; in each case, transmission being required to transmit the energy, whether it be mechanical or electrical, to the point of use or consumption.

The said Johnson further states (R. p. 42):

"In the operation of compressor units such as those described, no power is generated in the compressor unit except that required to overcome frictional resistance in the unit itself until gas is admitted to the compressor cylinder."

The statement of said Johnson, quoted above, is incorrect. No power is generated in the compressor unit. The compressor unit consumes the mechanical power manufactured by the internal combustion gas engine unit and transmitted to it by said transmission unit. It is elemen-

tary that the compressor units do not generate power, but on the contrary, consume power.

H. T. Goss, witness for appellee, in his testimony, stated (R. p. 44):

"Compressor units installed in the Munce Compressor Station of the Arkansas Louisiana Pipeline Company are known as 1000 HP Cooper, twin tandem, double acting, gas engine compressor units. Mechanically speaking, each is an integral unit due to the physical design and assembly and as such could be used for no purpose other than that originally intended, namely, to assist in the movement of natural gas through pipe lines."

For the reason set forth elsewhere in my testimony, the statement of the said H. T. Goss quoted above is erroneous. Mechanically speaking, three separate and distinct units make up the equipment as shown in Exhibit "A" (R. p. 91), and these three separate and distinct units do not constitute an integral unit; that the mechanical energy manufactured by the Internal Combustion Gas Engines at the Munce Station can be used to operate any unit requiring mechanical power. It so happens that at the Munce Station, the mechanical power is used to operate compressors.

The said H. T. Goss further said (R. p. 44):

"The energy created due to the physical design, assembly and types of equipment is not susceptible to transmission over considerable distances and can be used only for the purpose originally intended, namely, to assist in the movement of natural gas through the transmission lines, connected to the compressor cylinder."

This statement by said Goss is not accurate for the reasons set forth elsewhere in my testimony. Mechanical energy is susceptible of transmission over considerable distances, and is frequently transmitted over considerable distances as is shown by the testimony and evidence in this case (R. pp. 110-114).

The said H. T. Goss further stated (R. p. 45):

"The power required for such compression can be determined by generally accepted formulae. Under the theory involved in such determination it is apparent that no power is generated in the compressor unit except that required to overcome frictional resistance in the compressor unit itself, until or unless gas is admitted to the compressor cylinder and compressed. Therefore, the power is consumed in the actual movement of the gas in the compressor cylinder, causing a corresponding movement in the pipe line, with the result that the power is generated and used solely in accomplishing the movement of gas in the pipe lines, which movement to the required degree would be impossible without such power."

Said statement is inaccurate and is not sound from an engineering standpoint. No power whatever is generated in compressor units, marked such, in said Exhibit "A" (R. p. 91). Power is consumed by the compressor units.

G. F. Matthes (R. pp. 98-103):

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the School of Engineering of Tufts College in 1922, majoring in mechanical engineering. I have also taken work and pursued studies

in engineering at the Massachusetts Institute of Technology. Since 1922, I have been engaged in engineering work, which work has included the design, construction and operation of mechanical plants and power equipment. Also, during the past four years, I have held the position of Assistant Professor in the College of Engineering at the Louisiana State University.

I have examined the testimony in this cause by A. B. Singletary, Jr. (R. pp. 77-89, 93-98), pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company located at Sterlington, Louisiana. I have also carefully examined and studied the photograph introduced in evidence by appellant and marked "Exhibit A" (R. p. 91), for the purpose of identification, which photograph shows equipment similar to that located at the said Munce Station.

The detailed analysis made of the equipment shown in said photograph marked "Exhibit A" (R. p. 91), is correct.

Mechanically, the equipment shown in said photograph marked "Exhibit A" (R. p. 91), for the purpose of identification, is composed and made up of three separate and distinct units, each of said units performing a separate and distinct purpose, and being entirely separate and distinct from each other insofar as duties and functions are concerned. These three separate and distinct units making up the equipment shown in said photograph marked "Exhibit A" (R. p. 91), for the purpose of identification are, first, as shown by Roman Numeral I on said Exhibit, the compressor unit. The second separate, distinct and in-

dividual unit, is marked by Roman Numeral II, and is known as the transmission unit. The third separate and distinct unit is marked on said Exhibit by Roman Numeral III, and is the internal combustion gas engine unit.

The compressor unit, marked Roman Numeral I on said Exhibit, performs a dual purpose. It draws gas from the nearby wells through a system of feeder lines in the gas fields, and after drawing the gas from the wells through said system of feeder lines, compresses it and changes the condition of the gas from one pressure to a higher pressure, building up the pressure so that the gas may be delivered into the main pipe line, and, after having been built up in pressure, moves into the pipe line when withdrawals are made at the opposite end of the line.

The second separate and distinct unit, marked by Roman Numeral II on said "Exhibit A", is the power transmission unit. This unit simply connects the unit marked Roman Numeral III on said Exhibit, which unit manufactures and generates mechanical power, with unit marked Roman Numeral I, the compressor unit, which unit uses the mechanical power. It is through the medium of the transmission rods that the mechanical power, after being manufactured by the internal combustion gas engine unit marked Roman Numeral III on said Exhibit, is transmitted to the compressor unit, marked Roman Numeral I on said Exhibit. The said internal combustion gas engine unit transforms heat energy into mechanical energy, which is a manufacturing process. The mechanical energy thus manufactured by the internal combustion gas engine is a new commercial product.

In the equipment appearing in said photograph (R. p. 91), this product that is manufactured by the internal combustion gas engine unit is carried or transmitted through the medium of the rods and is consumed or used by said compressor unit. Mechanical power or energy is necessary to the operation of said compressor unit.

The three most common methods of manufacturing mechanical energy to operate compressor units are, first, the method used at the Munce Station, namely, manufacturing and generating mechanical energy by the changing of heat energy into mechanical energy by the use of internal combustion gas engine units. The second most common method is by the use of electricity, whereby electrical energy is changed or manufactured into mechanical energy by means of an electric motor. The third most common method is by the use of steam whereby the heat energy of steam is changed or manufactured into mechanical energy by means of a steam engine.

By the use of any of the methods of generating and manufacturing mechanical energy, a new and distinct form of energy results in each case from a manufacturing process; that is, changing one type of energy into another, and in each case a new commercial product is produced or manufactured, which is capable of transmission and use in industry.

With the equipment appearing in said photograph (R. p. 91), the Arkansas-Louisiana Pipe Line Company is doing three things; first, by the use of the internal combustion gas engine unit, marked Roman Numeral III, it is changing heat energy furnished by the natural gas used

as fuel, into mechanical energy, which is manufacturing. Second, by the use of the transmission unit, marked Roman Numeral II, it is transmitting said mechanical energy, after said mechanical energy has been produced or manufactured. The third accomplishment is the use of that mechanical energy after it has been manufactured and transmitted.

While said photograph (R. p. 91), shows the three separate and distinct units, namely, the manufacturing unit, the compressor unit, and the transmission unit, in close proximity, still the principles, mechanically, scientifically, and practically speaking, are identical, and are the same, as would be involved if the internal combustion gas engine unit was at some distance from the compressor unit which uses the energy. If the compressor unit and the internal combustion gas engine unit were, say, for example, a half mile apart, each respective unit would function in the same manner as it does when they are situated in close proximity. In both cases, whether the manufacturing unit and the unit which uses the power are in close proximity or at distant points, they are connected by the transmission unit. The only difference in the equipment would be the length of the transmission rods, it being necessary, of course, that the transmission rods be of sufficient length to connect the manufacturing unit and the unit which uses the power, whether the units be in close proximity or at distant points.

The equipment shown in said photograph (R. p. 91), is permanently affixed to a concrete foundation, and has a permanent situs at the Munce Station. All three units shown in said photograph, that is, the power manu-

facturing unit, the compressor unit, and the transmission unit, are affixed to the same concrete foundation, and are in close proximity, for the reason that this arrangement is much more convenient from the standpoint of manufacturing mechanical power, its transmission and use, than to have the units marked Roman Numerals I and III widely separated and connected by a long transmission unit, such as is commonly found in oil fields where one internal combustion gas engine unit manufactures mechanical power which is used to pump numerous wells, in which case the mechanical power manufactured by the internal combustion gas engine unit is transmitted great distances through the medium of transmission rods. (See R. pgs. 110-114).

Mechanical power, such as is manufactured by the internal combustion gas engine unit shown in said photograph could be transmitted to the compressor unit which uses it by belting, chains, shafting, ropes, etc.

I have read the decision rendered by the Supreme Court of the United States in the case of the *Utah Power & Light Company v. Pfof*, 52 S. Ct. 548, 286 U. S. 165, and have carefully studied the facts involved in that litigation. The generation and manufacture of electrical energy by harnessing the waterfall in Utah and compelling it to operate the turbines, thereby changing potential energy into mechanical energy, and the mechanical energy into electrical energy by the use of generators, and the transmission of the electrical energy over transmission lines into other states, involves the necessity of building up sufficient voltage at the point of manufacture to cause the electrical energy to flow of its own ac-

cord over the transmission lines. Scientifically speaking, it is a fact that unless the generators operated by the turbines at the falls in the Utah case, assisted by transformers build up a sufficiently high voltage, the electrical energy would not of its own accord flow over the transmission lines for any distance in sufficient quantity to make it commercially profitable. Similarly, it is necessary that the pressure of gas be built up before the gas can be delivered into the main high pressure pipeline. It is the pressure thus created that causes the gas to move in the main pipeline of its own accord.

The term "voltage" as applied to electrical energy, is that property of the electrical energy that is comparable to pressure of gas or water that causes the gas or water to move of its own accord. Amperes, as applied to electrical energy, is the volume. In the *Pfost* case, the generators operated by the turbines had to be designed and properly adjusted so that at the time the mechanical energy was manufactured into the electrical energy, the voltage of the newly manufactured product, namely, electrical energy, had to be sufficiently high to cause the flow of the electrical energy over the transmission lines.

Electrical energy in sufficient quantities to supply the commercial demand in the states served by the plant in Utah could be manufactured by the generators, but if the generators and transmission equipment were not so designed and properly adjusted whereby the voltage of the electrical energy was sufficiently high to cause the flow of the electrical energy over the transmission lines, the volume of electrical energy would be available at the plant in Utah, but would not flow over the transmission lines.

In other words, injecting into the electrical energy so manufactured, at the time it is generated or manufactured, the ingredient which causes it to flow over the transmission lines is made a part of the manufactured or generated product, and is comparable to the compression of gas.

The thing that causes gas to move through the main pipe line of the Arkansas-Louisiana Pipe Line Company from its Munce Plant at Sterlington to points in Texas and Arkansas, is the pressure built up in the line by the use of the compressor units which compress the gas and load it into said line. The thing that causes electrical energy to flow over transmission lines, as involved in the *Pfost* case, is the injection into the electrical energy, at the time of its generation, sufficiently high voltage to cause it to flow over the transmission lines into the other states.

F. J. Mechlin (R. pp. 103-105):

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from Allegheny College, Meadville, Pa., in 1914 with a degree of Bachelor of Science. I also hold a Master of Science degree from Louisiana State University. My experience with internal combustion engines covers a period of thirty years. My first work in this line was between the years 1904 and 1908 as an employee of the Bessemer Gas Engine Company, with main offices and shops located at Grove City, Pa. The Bessemer Gas Engine Company was engaged in the development, manufacture and sale of gas engines, gas compressors, pumping powers and Deisel engines. This is the same concern now merged to form the Cooper-Bessemer Company

that manufactured the internal combustion engines, transmission units, and compressors used by appellee at their plant commonly called the "Munce Compressor Station". My work as an apprentice machinist covered a period of two years and gave an excellent opportunity to personally know the construction and testing conditions for various products manufactured by the company. During the period mentioned, I worked under Messrs. Montgomery and Bartholomew, Shop Foremen, and Mr. John McCune, Plant Superintendent.

During the latter part of my employment term I operated a lathe on which I machined brass castings and rough steel blanks and finished these into a complete valve unit which was then installed in the "direct driven" gas compressor then being commercially developed by the Bessemer Gas Engine Company. After sets of compressor valves were finished by me they were turned over personally to Mr. McDougall, Chief Tester for the company, and under his immediate supervision they were placed into position and test runs made on the compressors. I had an opportunity to observe the behavior of a number of compressors of this type as they were manufactured and tested before shipment to customers.

Prior to the development of the "direct driven" unit shown in Exhibit A (R. p. 91), it was customary to transmit power from a Bessemer gas engine (prime mover) to a gas compressor by means of belting. These belts were nothing more or less than devices used to transmit power from the "prime mover" to the power consuming unit. The length of the belt and consequently the distance from the

"prime mover" to the power consuming unit could and did vary within rather wide limits.

Mr. H. A. Murray, then Chief Designing Engineer of the Bessemer Gas Engine Company, claimed that the "direct driven" engine compressor unit (the forerunner of the type shown in Exhibit A (R. p. 91), would have a distinct advantage over the separate units. Manufacturing and sales experience since that time indicated that his claims were well founded.

I agree with A. B. Singletary, Jr. (R. pp. 77-89, 93-98), that the mechanical unit pictured in said Exhibit A (R. p. 91), consists of three parts, shown by Roman Numeral III; a gas engine which converts heat energy due to the combustion of natural gas (within the gas engine cylinder) into mechanical energy and causes pistons to be displaced, thereby causing shafts to move and flywheels to revolve. This newly created mechanical energy may be transmitted as such by belts, shafting and other means, to more or less distant power-consuming units. In the illustration the power-transmitting unit is labelled Roman Numeral II. This merely transfers mechanical energy from the prime mover (gas engine) to the power consuming unit labelled Roman Numeral I (compressor). Though the assembly shown in Exhibit A is bolted to a common iron bed-plate and set on a common concrete foundation, there are three distinct functions performed by three separate and distinct machine units:

- III. Prime mover converting energy into mechanical energy. (gas engine)
- II. Power transmitting unit.
- I. Power consuming unit. (compressor)

Ellis P. Gaudet (R. pp. 105-114):

I am a resident of Port Allen, West Baton Rouge Parish, Louisiana. I graduated from the Louisiana State University in 1933, with a degree of Bachelor of Science, majoring in mechanical engineering. During the school term 1934-1935, I did graduate work in mechanical engineering at the Louisiana State University and taught mechanical engineering classes. My principal work in these classes was the conducting of tests of steam engines, steam pumps, gas engines, etc. Since September, 1935, I have been employed as an engineer by the Supervisor of Public Accounts for the State of Louisiana, and my work in this capacity has brought me in contact with all types of gas engines, compressors and the like, used in the various industries in Louisiana, including the oil and gas industries.

I have studied the testimony of A. B. Singletary, Jr. (R. pp. 77-89, 93-94, 94-98), given in the above entitled and numbered cause, pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company located at Sterlington, Louisiana.

I have also carefully examined and studied the photographs introduced in evidence by appellant marked "Exhibit A" (R. p. 91), for the purpose of identification, which photograph shows equipment similar to that located at the said "Munce Compressor Station". I have also carefully studied the comparison made in the operation of certain oil properties in Caddo Parish, Louisiana, to the operation at the "Munce Compressor Station".

The detailed analysis made of the equipment shown in said photograph and the comparison made in said Single-tary's testimony is correct.

Every installation of an internal combustion gas engine driving a compressor, consists of three separate and distinct operations, namely; the generation or manufacture of mechanical energy or power by the internal combustion gas engine unit; the transmission of this mechanical energy or power from the point of power take-off of the internal combustion gas engine unit to the compressor unit, this transmission may be through one of several mediums such as, belts, chains, gears, shafts or rods; and third, the consumption or use of this mechanical energy by the compressor unit.

Exhibits 1, 2, 3, 4, and 5 (R. pp. 110-114) introduced in evidence by appellant, are actual photographs, taken by me, showing the operation of certain oil wells in one of the oil fields in Louisiana, where one internal combustion gas engine unit, through the medium of rods as transmission units, is used to pump as many as nine oil wells at one time, said oil wells being located as far as one-half mile from the power manufacturing internal combustion gas engine unit.

Exhibit 1, (R. p. 110), shows the North side of a building which is used exclusively to house one 90 horsepower internal combustion gas engine unit which unit is identical in principle of operation to the internal combustion gas engine units used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station". This engine converts heat energy of natural gas used as fuel

into mechanical energy or power just as do the internal combustion gas engine units operated by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station". Also shown on Exhibit 1, are five rods, all leading from the said internal combustion gas engine unit. These rods are used to transmit the mechanical energy manufactured by the 90 horsepower internal combustion gas engine unit, from said unit to pumping units located on five different oil wells. These rods perform the same function as do the transmission rods used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station". This operation is identical in principle to the transmission of the mechanical energy at the "Munce Compressor Station", the only difference being that in this case the rods are many times the length of the rods at the "Munce Compressor Station".

Exhibit 2, (R. p. 111), shows the South side of the same building used exclusively to house one 90 horsepower internal combustion gas engine unit. On said Exhibit 2, are also shown four rods which lead from the same 90 horsepower internal combustion gas engine unit and transmit the mechanical energy manufactured by said internal combustion gas engine unit from same, to four other oil wells.

On Exhibit 3 (R. p. 112), is shown the same building used exclusively to house one 90 horsepower internal combustion gas engine unit as shown in Exhibits 1 (R. p. 110), and 2 (R. p. 111). Also shown on Exhibit 3 (R. p. 112), is one of the same five rods leading from the North side of said building. I have labelled this rod, "Transmis-

sion Rod". In addition to the building housing the internal combustion gas engine unit and the one transmission rod, Exhibit 3 (R. p. 112), also shows the pumping mechanism at one of the oil wells which is operated by the mechanical energy transmitted from the internal combustion gas engine unit through the transmission rod and used in pumping an oil well. In other words, Exhibit 3 (R. p. 112), shows the entire system on one well; the building housing the source of the mechanical energy, the internal combustion gas engine unit, the transmission rod, and the power consuming unit. This arrangement is identical in principle to that of the manufacture, transmission and consumption of mechanical energy employed by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station".

Exhibit 4 (R. p. 113), gives another view of the same transmission rods leading from the North side of the building housing the 90 horsepower internal combustion gas engine unit, above described. In addition, in the background marked "Well", is shown another power consuming pumping unit located on another oil well. Also shown on this Exhibit 4 (R. p. 113), is a mechanism, which we have marked "A", which is used to change the direction of one of the transmission rods. Marked "B" on said Exhibit, is shown the same transmission rod that is shown on Exhibit 5 (R. p. 114).

Exhibit 5 (R. p. 114), gives another view of the same transmission rod, labelled "B" in Exhibit 4 (R. p. 113), and in the back ground on Exhibit 5, and marked "Well", is shown another well on which is located another power consuming, pumping unit. This Exhibit 5, clearly

shows the long distance that mechanical energy can be transmitted through the medium of a rod.

These five Exhibits (R. pp. 10-14), clearly show that mechanical energy can be, and is, transmitted great distances through the medium of rods as transmission units and that the generation or manufacture of mechanical energy through the use of an internal combustion gas engine unit, is an operation very distinct from the transmission or consumption of that mechanical energy.

As explained in the testimony of A. B. Singletary, Jr., (R. pp. 77-89, 93-98), mechanical energy manufactured by any internal combustion gas engine unit, such as the 90 horsepower engine above described or one of the engines used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station", is a new and distinct product, of value commercially, and is capable of transmission and use in industry and can be used to operate any sort or type of unit requiring mechanical power.

In the same oil field in which the photographs above described were taken, there are several other oil companies operating other than the one owning and operating the 90 horsepower internal combustion gas engine unit, hereinabove described. These other companies could very easily buy mechanical power for the pumping of their wells from the company operating said 90 horsepower engine. The only thing necessary would be to connect another transmission rod from the 90 horsepower engine to their well. If this were done, there would be the sale of mechanical energy, as such, for use in industry.

Hamilton Johnson (R. pp. 115-117):

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from Rollins College in 1893, with the degree of Bachelor of Arts, from Vanderbilt University in 1896, with the degree of Bachelor of Engineering and after an additional year of graduate work at Vanderbilt received in 1897, the degree of Mechanical Engineer. I was engaged continuously in the active practice of the engineering profession for the next twenty-seven years, my work consisting largely of the design and installation of power plants of various kinds. I was for a number of years City Engineer of Jackson, Mississippi. From 1920-1923, I had charge of the design and supervision of the engineering features of the rehabilitation of all the State Institutions of Mississippi, carried out by the Mississippi State Bond Improvement Commission.

In 1923, I came to Baton Rouge, to handle the engineering problems involved in the construction of the new plant of the Louisiana State University. When this work was completed I was appointed head of the department of Mechanical Engineering in the Louisiana State University and have occupied that position continuously since September, 1924. In that capacity I give instruction in machine design and also in the theory and design of internal combustion engines.

I have no personal knowledge of the equipment of the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company nor of the various operations carried on there, but I have carefully examined the testimony of A. B. Singletary, Jr. (R. pp. 77-89, 98-98), Benjamin C.

Craft (R. pp. 117-121), G. F. Matthes (R. pp. 98-103), and Ellis P. Gaudet (R. pp. 105-109), and the different exhibits accompanying them in this case (R. pp. 91, 110-114). If the equipment and method of operation of the compressor station are substantially as shown in their testimony and exhibits, it is my opinion that the conclusions reached by the affiants as to the segregation of the different elements of machinery according to the specific functions performed by each are thoroughly sound and fully justified by the facts set out in their testimony.

In the formal study of machine design all machinery is divided into three classes:

1. **Prime movers**—machines which receive from some source in nature energy which is not of a kind suitable for useful work and transform this into the mechanical energy of moving solid bodies which may be applied to doing useful work. As examples of prime movers, we have steam boilers and engines and internal combustion engines which utilize the potential heat energy of fuel as their source of natural energy, windmills which utilize the kinetic energy of moving masses of air, water wheels which utilize the kinetic energy of moving masses of water, etc.

2. **Machinery of transmission**, machine elements adapted to receive mechanical energy from a prime mover and transfer this energy to the place where it is to be used to do work. As examples, we have shafts, rods, belts and pulleys, gear wheels, etc., and in the case of electrical transmission of power a complex system consisting of the electric generator, transformers, wires and motor.

3. **Machinery of application**, machines adapted to receive the mechanical energy which has been brought to them and apply it to perform the specific

work for which they were designed. Into this latter class, therefore, would fall all machines used to perform specific tasks such as machine tools, pumps, compressors, etc.

Wherever any task is performed by machines as distinguished from human or animal energy all three of these classes of machinery must necessarily be employed, and this is true whether the different units are widely separated or all assembled on a single foundation.

In the case under consideration, as pointed out in the testimony above referred to, the gas engine is the prime mover, the rods leading from the cross-head of the engine to the compressor constitute the machinery of transmission, and the compressor itself is the machine of application which applies the mechanical energy transmitted to it from the prime mover to the specific task of drawing gas from the wells and raising it to the higher pressure necessary for its economical transportation in pipes to a distance.

The transformation of potential heat energy into mechanical energy by the prime mover is, therefore, an entirely distinct operation from the utilization of that mechanical energy by the compressor.

B. C. Craft (117-121):

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the Leland Stanford University in 1929 with a degree of Engineer in Mines, specializing in Petroleum Engineering. I worked during the summer of 1929 for the Olympic Refining Company in California. From the Fall of 1929 to 1935, I held the chair

of Assistant Professor of Petroleum Engineering at Louisiana State University. At present, I am Associate Professor of Petroleum Engineering at the above institution. During the summers of 1930 and 1931, I worked as a floorman for the Stovall Drilling Company in both the Richland and Monroe gas fields.

I have visited the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company, located at Sterlington, Louisiana, and have carefully examined all of the machinery and equipment situated on the site of the said "Munce Compressor Station", including the system of meters, cooling system, separators, and other equipment referred to herein.

I have read and carefully examined the testimony of A. B. Singletary, Jr. (R. pp. 77-89, 93-98), in this cause, pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company, located at Sterlington, Louisiana, I have carefully examined and studied the photographs introduced by appellant, and marked "Exhibit A" (R. p. 91), for the purpose of identification. I have also carefully examined and studied the copy of a map introduced in evidence and marked "Exhibit B" (R. p. 92), for the purpose of identification.

I feel that I am qualified from my engineering experience, both theoretical and practical, to say that the detailed analysis of the equipment shown in the said photograph (R. p. 91), introduced in evidence, is correct.

Any arrangement of an internal combustion gas engine driving a compressor, whether directly coupled or connected through an arrangement of belts or otherwise, can be divided into three separate and distinct units, namely: the internal combustion gas engine unit, prime mover, which manufactures mechanical energy or power by the conversion of heat energy contained in the gas used as fuel into mechanical energy or power, a new product having entirely different properties from the heat energy of the fuel used; second, a compressor unit which unit uses or consumes the mechanical energy manufactured by the internal combustion gas engine unit and, third, the transmission unit, which unit transmits the mechanical energy or power manufactured by the internal combustion gas engine unit, to the power consuming compressor unit.

The analysis and explanation made in the testimony of the said A. B. Singletary, Jr. (R. pp. 77-89, 93-98), of the movement of gas handled by the Arkansas-Louisiana Pipe Line Company from its wells located in the Richland and Monroe gas fields to the plant commonly called the "Munce Compressor Station" by reference to the map marked "Exhibit B" (R. p. 92), correctly describes the operation of the equipment shown on said map.

The gas wells owned by the Arkansas-Louisiana Pipe Line Company are connected to a field gathering system which is the means by which the gas is gathered or collected from the gas wells in the field and delivered to the compressor units located at the "Munce Compressor Station".

The action of the compressor units at the "Munce Compressor Station" caused a lower pressure to exist in

the field gathering lines than would have existed were all of the gas wells allowed to flow into these lines under their own pressures. In fact, had all of these wells been allowed to flow into the field lines under their own rock pressures, only the higher pressure wells would have produced. With the condition of lowered pressure existing in said field gathering lines, all of the wells operated by the Arkansas-Louisiana Pipe Line Company were regulated to produce an allowable quota as fixed by the Louisiana Department of Conservation. The compressor units at the "Munce Compressor Station", which caused this lowering of pressure in the field gathering lines were, therefore, necessary from the viewpoint of production as explained in the testimony of the said A. B. Singletary, Jr. (R. pp. 77-89, 93-98).

It was explained to me by the Superintendent of the "Munce Compressor Station" at the time of my inspection of said plant, that the gas supplied to said station from wells owned by the Arkansas-Louisiana Pipe Line Company and compressed at the "Munce Compressor Station", must be merchantable gas. That is, said gas be in such condition that it can be sold to the consumer. However, said gas was not merchantable because it contained quantities of water and natural gasoline. Large water traps were, therefore, installed in each line delivering gas to said "Munce Compressor Station". The purpose of these water traps was to remove the water and natural gasoline contained in the gas before same was metered in the "Munce Metering Station." These water traps consisted of large vessels, in some cases, equipped with baffles. The gas entered these vessels

through a three inch, or larger, line about half way up from the bottom of said vessels, and due to the large diameter of the vessels as compared to said line, the velocity of flow of the gas was greatly reduced, thereby causing the water and natural gasoline contained in said gas to settle to the bottom of these traps, where same could be blown out when necessary.

The gas, after having passed through these water traps, entered the "Munce Metering Station" where it was metered by both the producing company and the purchaser, the Arkansas-Louisiana Pipe Line Company. The gas after being metered, passed through gate valves into one of three main "Headers" leading to the compressor units. These "Headers" consisted of two twenty inch lines and one sixteen inch line. These "Headers" were, in turn, connected to two transverse "Headers". Due to the large size of these transverse "Headers" and the fact that all of the water and natural gasoline was not removed from the gas by the water traps located ahead of the "Munce Metering Station", there was a further collection of water and gasoline in these transverse "Headers", which was blown out when a sufficient amount had accumulated.

Due to the inefficiency of the water traps located ahead of the "Munce Metering Station" as well as their small capacity, certain quantities of water vapor and gasoline vapor were carried into the compressor units along with the gas.

The gas, after being compressed in said compressor units, was delivered into lines leading to cooling towers. The cooling of the gas in the cooling towers, accomplished

the following: Water and gasoline contained in the gas was condensed; the volume of the gas was reduced, that is, the space occupied by a given quantity of the gas was reduced, because Charles' Law states that with constant pressure, the volume of a gas varies as the absolute temperature, and because of this reduction in space occupied, a larger amount of gas was loaded into the main 20-inch interstate line; corrosion of the main 20 inch interstate line, which would have occurred from gas at high temperature, was reduced; melting of the insulation on the main 20 inch interstate line from the hot gas was eliminated.

At the time of my inspection of the "Munce Compressor Station", a "scrubber" had been installed in the line leading from the cooling tower. The purpose of the said "scrubber" was to remove the remaining quantities of water and gasoline which it was found were not removed by the water traps or elsewhere.

The "Munce Compressor Station" served the following purposes; the generation or manufacture of mechanical power or energy necessary to the operation of any gas compressor; the transmission of this mechanical power or energy from the source of said mechanical energy or power, the internal combustion gas engine units, to the power consuming compressor units; the production of the allowable quota of gas from wells which would otherwise not have been able to produce; the removal of water and gasoline from the natural gas thereby making same suitable for pipeline transportation and sale; the preparation and loading of the gas into an interstate carrier for interstate shipment.

It should be emphasized that each step which removed quantities of gasoline and water from the natural gas, changed the specific gravity of the gas as well as its chemical composition which characterized each as a manufacturing process.

APPELLEE'S TESTIMONY.

Appellee offered testimony of several employees. Excerpts from this testimony, together with allegations contained in the bill of complaint, further show the type of business in which appellee is engaged.

Appellee alleges that it is a foreign corporation, and in Paragraph three (3) of the bill (R. 1) :

"That petitioner is engaged in the States of Louisiana, Arkansas and Texas in the business of producing, buying, transporting and selling natural gas. In which business it owns and maintains systems of pipelines among which is a twenty inch (20") line extending from Sterlington, Ouachita Parish, Louisiana to a point at or near Blanchard in Caddo Parish, where one of its branches extends further westward to a point in the State of Texas near Waskom, the other extending in a northerly direction into Miller County, Arkansas, thence into the state of Texas through Atlanta and Texarkana and other points, and thence into the State of Arkansas to Little Rock in that state."

Appellee further shows, in Paragraph four (4) of its bill (R. 2) :

"That from August 1st, 1932, until July 31st, 1933, the Natural gas transported through the pipelines described was in part produced by petitioner from

leases owned and operated by it in the Monroe and Richland fields in Louisiana, and in part purchased from other producers of gas in those fields, - -".

Appellee, in Paragraph six (6) of the bill alleges (R. 2) :

"That the lines described constitute the sole means of marketing the gas produced and purchased by petitioner in the Monroe and Richland fields; and that the pressure necessarily maintained in such lines is such that wells in the field referred to cannot produce their natural flow into the lines to permit the transportation and marketing of the product for which purpose petitioner owns and operates at Sterlington in Ouachita Parish, Louisiana, a compressor station known and referred to herein as the Munce Compressor Station."

Appellee, in Paragraph nine (9) of its bill, alleges (R. 3) :

"That from August 1st, 1932, to July 31st, 1933, all gas delivered into petitioner's twenty inch line herein described at Sterlington and transported through said line to various points in Louisiana, Texas and Arkansas was compressed at the Munce Compressor Station through use of the equipment situated there; that such compression was essential and necessary to build up sufficient pressure in the line by volume of gas therein to permit constant withdrawals at distant points and the consequent transportation in the interstate commerce described; that the pressure in the line necessarily maintained for such purposes exceeded the rock pressure of wells from which gas was received and that the product of such wells could not have been delivered into the line nor could they have produced at their natural flow and without the compression described."

Appellee, in Paragraph sixteen (16) of its bill, subsection B, alleges (R. 5):

"In the alternative, petitioner shows that should the equipment and machinery described not be considered as an essential and necessary instrumentality of the interstate business conducted by petitioner, that it is an essential and necessary instrumentality for the production of gas in the Monroe and Richland fields as described herein, - - -."

Appellee offered the testimony of W. E. Nestor, who stated that he has been superintendent of the plant at Munce since 1920. He further stated that the Munce Station at Sterlington, involved in this litigation, consists of (R. 49):

"- - - ten 1,000 horsepower Cooper Bessmer gas burning engines, directly connected to ten gas compressors, and two 250 horse power gas burning engines directly connected to electric generators; - - -"

Appellee's next witness was Walter A. Stewart, Chief Clerk of the Gas Accounting Department of said Company. The testimony of this witness, in part, was as follows (R. 63):

"The main pipe lines, including the 20-inch gas pipeline from Sterlington, Ouachita Parish, Louisiana, to Waskom, Texas, are provided at all points of intake and outlet with measuring meters equipped in many cases with thermometers. These meters carry charts automatically recording amounts of gas passing through said meters and these charts are changed daily, - - -"

The witness further stated that (R. 63):

"From the original meter charts deponent tabulated, during the year ending July 31st, 1933, amounts of gas received and delivered into and from the said 20-inch pipeline, and from such original records authorized payment by appellee for all gas received from purchasers, and rendered invoices, which were duly paid, for all gas sold from said pipelines."

Appellee's third witness was Robert H. Johnston, Chief Gas Dispatcher of the Arkansas-Louisiana Pipe Line Company. This witness stated that one of his duties is to see that sufficient gas is loaded into the 20 inch pipeline leading from the Munce Station to points within and without the State, to take care of the demands for gas by consumers. This witness further stated (R. 69):

"The gas which is thus required in the Company's business to be delivered into Texas and Arkansas through said 20-inch line can not be delivered from the wells producing in the Monroe and Richland fields without the use of power in the form of compression; gas from wells in the Richland gas field, which is delivered into the 20-inch line, arrives at Sterlington averaging about 90 pounds per square inch; gas delivered into said line from the Monroe gas field is delivered at Munce Compressor Station with an average pressure of about 220 pounds per square inch."

The witness further stated that (R. 70):

"All of the gas produced in the Richland gas field is produced at pressures less than 275 pounds, so that none of said gas can be delivered into the 20-inch line, herein referred to, without the use of power in the form of compression where the said

line has pressures sufficient to meet the requirements of the company's business; There are also in the Monroe gas field many wells with working pressures so low that the gas from such wells could not be utilized and delivered into the said 20-inch line without the use of compression for the reasons herein mentioned. Munce Compressor Station is some twenty-five miles from wells in Richland Parish gas field, and pressures of the gas upon arrival at Munce Station from that field are lower than working pressures at the wells, and this fact likewise requires the use of additional compression in order to deliver gas produced in the Richland field into the appellee's line."

SPECIFICATION OF THE ASSIGNED ERRORS INTENDED TO BE URGED.

Appellant intends to urge all of the fifteen errors assigned. (R. 135-140).

Specifically appellant will urge all of the fifteen errors assigned:

(1)

The Court erred in holding that the tax levied by Section 3 of Act 6 of 1932, insofar as appellee is concerned is a direct burden on interstate commerce and is, therefore, violative of the commerce clause of the Constitution of the United States.

(2)

The Court erred in holding that the prime movers (internal combustion gas engines which convert, produce, generate or manufacture mechanical energy or power from heat energy in natural gas), the machinery of trans-

mission (rods or shafts used to transmit mechanical energy or power from the point of generation to the point of use or application), and the machinery of application (compressors which use the mechanical energy or power in compressing the natural gas and loading it into the twenty-inch interstate main), for the purpose of this case constitute one unit, and that the one unit in its entirety, is an instrumentality of interstate commerce.

(3)

The Court correctly held that, in the language of the Court, "there is no dispute as to the physical or mechanical nature of these operations, (1. Prime movers which produce, generate or manufacture mechanical energy or power; 2. Machinery of transmission, consisting of rods or shafts which transmit the mechanical energy or power after its production, generation or manufacture from the place of production, generation or manufacture, to the point of use where it is consumed by the machinery of application, the compressors; 3. The compressors, which consume the mechanical energy or power, after its production, generation or manufacture, and transmission), and we find these additional facts as described by the witness (for the state) * * *," but the Court erred in failing to accept the conclusions and opinions of the State's expert witnesses as to the effect. (Parenthesis added).

(4)

The Court erred in holding that the prime movers (internal combustion gas engines, that are bolted down to concrete and have a permanent situs in Louisiana, and are used by appellee to convert, produce or manufac-

ture the heat energy in natural gas into mechanical energy or power which is transmitted through rods or shafts to the point of consumption), are instrumentalities of interstate commerce.

(5)

The Court erred in not holding that the prime movers in the case at bar are engaged in an intrastate function, viz., that of producing, generating or manufacturing mechanical power or energy, and that appellee is engaged in the intrastate business in Louisiana of producing, generating or manufacturing mechanical power or energy and is subject to the tax levied by Section 3 of Act 6 of 1932, which levies an excise, license or privilege tax on the business of producing and generating mechanical energy or power, measured by the horse power capacity of the prime movers used to produce, manufacture or generate such power or energy.

(6)

The Court erred in holding that the business or operation in Louisiana of appellee, which is both intrastate and interstate, "cannot be dissected or torn apart so as to make of it distinct entities for the purpose of State taxation, but that it must be treated as a unit;" the Court further erred in not holding that when appellee produces, manufactures and generates mechanical power or energy in Louisiana by the use of prime movers, that such operation or business in Louisiana is intrastate in character, and is subject to the tax levied by Section 3 of Act 6 of 1932, even though such energy or power may ultimately be transmitted and used in both intrastate and

interstate operations, or even if it should ultimately be used exclusively to operate an instrumentality of interstate commerce; the Court erred in holding that the State has no right to assess an excise, license or privilege tax on the intrastate business of one engaged in both intrastate and interstate commerce.

(7)

The Court erred in failing to hold that appellee, in operating the two prime movers (internal combustion gas engines) in Louisiana at its Munce Plant with 250 horsepower each, for the purpose of producing, generating or manufacturing mechanical energy or power, which energy or power is ultimately consumed by electric generators which generate electricity for lighting buildings, operating repair machines, repair shops and air compressors, was engaged in the intrastate business of producing, generating or manufacturing mechanical energy or power and is subject to the tax levied by Section 3 of Act 6 of 1932.

(8)

The Court erred in failing to hold that the tax levied by Section 3 of Act 6 of 1932 is an excise, license or privilege tax levied on the privilege of producing, generating or manufacturing mechanical power or energy in Louisiana as a distinct act of producing, and without regard to its subsequent use.

(9)

The Court erred in failing to hold that, so far as appellee in the case at bar produces, manufactures or generates mechanical energy in Louisiana, its business is purely intrastate, subject to State taxation and control.

(10)

The Court erred in holding that, in the language of the Court, "The operation of its internal combustion engines is for the sole purpose of applying their power to the gas—," and further erred in failing to hold that it is the compressors, operated by appellee that draw the gas from the wells through the field-gathering lines and forces it into the twenty-inch interstate main, and that the mechanical power or energy manufactured, produced or generated by the prime movers is transmitted to the machinery of application, the compressors, and it is the compressors that aid in the production and compression of the natural gas.

(11)

The Court erred in failing to hold that the natural gas enters interstate commerce only after its actual physical delivery into the twenty-inch interstate main at appellee's Munce Station; the Court further erred in failing to hold that the gathering of the gas in the field-gathering systems by both appellee, and persons from whom appellee purchases gas, is intrastate commerce; the Court further erred in not holding that the conversion of natural gas from an unmerchantable product to a merchantable product at the Munce Station constitutes a manufacturing process and an interruption in the transportation of the natural gas, and is further reason the gas is not in interstate commerce until it is actually physically within the twenty-inch interstate main at appellee's Munce Station.

(12)

The Court erred in finding that appellee's only business in Louisiana is that of transporting natural gas by pipe line into other states, and erred in failing to find that appellee is engaged in intrastate commerce in Louisiana in owning, operating and producing natural gas from the soil in Louisiana, maintaining a field-gathering system, intrastate in character, which gathers the gas from the wells and carries it to a central point on the edge of the producing area where it is converted from an unmerchantable product to a merchantable product, as the record shows, and is engaged in an intrastate operation in the generation, manufacture and conversion of heat energy in natural gas by the use of internal combustion gas engine units, into mechanical power, which is a new product of commercial value, capable of measurement, sale and transmission, all of which constitutes intrastate commerce, and is subject to State regulation and taxation.

(13)

In the alternative, and in the alternative only, should the tax levied by Section 3 of Act 6 of 1932 be held to be on interstate commerce, which is denied by appellant, then, and in that event only, appellant assigns as error the failure of the Court to find that the tax involved falls not directly on interstate commerce, but indirectly, and not violative of the commerce clause of the Constitution of the United States; the Court further erred in failing to hold that when a tax is, as here, levied on all similarly situated, and in terms is not upon the business done, so that it appears on the face of the statute that "it is clear that it is not imposed with the covert pur-

pose or with the effect of defeating federal constitutional rights," it is not a prohibited burden on interstate commerce, but is a valid exercise of the power of the State to tax.

(14)

The Court erred in failing to find that the machines of application in the case at bar, viz., the compressors, can be operated by steam or electricity, in addition to the mechanical energy or power produced, generated or manufactured by internal combustion gas engines, as in the case at bar.

(15)

The Court erred in granting the permanent injunction herein against appellant and in favor of appellee.

SUMMARY OF ARGUMENT.

Section 3 of Act 6 of 1932 levies an excise, license or privilege tax on persons, firms, corporations, or associations of persons, for the privilege of manufacturing, producing or generating mechanical or electrical power or energy in Louisiana.

The Arkansas-Louisiana Pipe Line Company, appellee herein, is engaged in the business in Louisiana of manufacturing, producing or generating mechanical energy or power by converting the heat energy in natural gas into mechanical energy or power by the use of internal combustion gas engines, which operation by appellee is intrastate or local in character.

The mechanical energy or power so manufactured, produced or generated is transmitted from the point of manufacture, generation or production to the point of use or consumption by means of rods.

The machinery of application, or machinery which uses said mechanical power or energy are compressors. The compressors are used by appellee to produce gas in Louisiana and gather it in the field, and then is used to compress the gas so produced and gathered and deliver it into the 20-inch main pipe line, one terminus of which is at its Munce Station. Appellee also operates two additional internal combustion gas engines by which mechanical energy or power is manufactured, produced or generated, which power is transmitted and used by electric generators, which generate electricity to be used in lighting the buildings at the Munce Station, and to operate machine shops and air compressors.

The tax levied by Section 3 of Act 6 of 1932 is a tax on the specific privilege of manufacturing, generating or producing mechanical energy or power in Louisiana, and has no bearing whatever on the transmission, use or consumption of the mechanical power or energy after it has been so manufactured, generated or produced.

Mechanical energy or power, after being manufactured, generated or produced, is capable of transmission to the point of consumption or use, is capable of measurement and sale, and is an article of commerce.

The tax levied by Section 3 of Act 6 of 1932 being on the person for the privilege of manufacturing, generating, or producing mechanical energy or power, and

having no reference whatever to the transmission and ultimate use of the power or energy, is not, and could not, be a direct burden on interstate commerce, even if the power so manufactured, generated or produced is ultimately transmitted and used in the furtherance of interstate commerce.

There is a definite distinction between manufacture, production, or generation, and the transmission and use and consumption of mechanical energy or power; the former, as in the case at bar, being local and intrastate in character, even though the latter, that is, the consumption of the mechanical power or energy may be employed to further interstate commerce.

Even though mechanical energy or power is generated, produced or manufactured in Louisiana, by internal combustion gas engines permanently located in Louisiana, with the intent and knowledge that it is to be transmitted to the point of consumption and there used in furtherance of interstate commerce, still the manufacture, generation or production is an operation intrastate in character, as in the case at bar, and an excise, license or privilege tax upon the person, for the privilege of so manufacturing, generating or producing mechanical energy or power, is not a direct burden on interstate commerce.

Even if the Court should hold that the compressors, the transmission rods, and the internal combustion gas engines are instrumentalities of interstate commerce, the tax levied by Section 3 of Act 6 of 1932 is not a direct burden on interstate commerce, but is indirect, and, therefore, is not in violation of the commerce clause of the Federal Constitution.

The mechanical energy or power manufactured, generated or produced by the two 250 horsepower internal combustion gas engines, which power or energy is transmitted and used to operate electric generators for the purpose of generating electrical energy, which is used in lighting the buildings at the Munce Station, to operate machine shops and air compressors, is not used in the furtherance of interstate commerce, and it follows that the tax levied by Act 6 of 1932, insofar as these engines are concerned, could not be a direct burden on interstate commerce.

The gas produced and gathered, by use of the compressors involved, and compressed and loaded into the 20-inch main pipe line at the Munce Station, does not move in interstate commerce until it is actually and physically loaded into the 20-inch pipe line.

ARGUMENT.

Point I.

ACT NO. 6 of 1932 LEVIES AN EXCISE, LICENSE OR PRIVILEGE TAX FOR THE PRIVILEGE OF MANUFACTURING, GEN- ERATING OR PRODUCING MECHANICAL ENERGY OR POWER.

Act No. 6 of 1932, levies what is known as the Power Tax Law of Louisiana. Section 1 of the Act levies an excise, license or privilege tax upon every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity in Louisiana, which tax is measured by the gross receipts from

the sale of the electricity in the State, except that electricity that is sold for resale.

Section 2 of the Act levies the same type of tax at the same rate upon those engaged in the business of selling electricity not manufactured or generated by him or it, with the measure of the tax the gross receipts from the sale of electricity, excluding receipts from the sale of electricity made for resale.

In order to collect an excise, license or privilege tax from persons and corporations in the State that manufacture, produce or generate their own electrical or mechanical power or energy, the Legislature, by Section 3 of the Act, levied, in addition to all other taxes imposed by law upon every person, firm, corporation or association of persons, an excise, license or privilege tax for the privilege of generating, manufacturing or producing electrical or mechanical power or energy which has not been subject to the tax imposed by Sections 1 and 2 of the Act, which tax is measured by the horsepower capacity of the machinery or apparatus known as "prime mover" or "prime movers" operated and used by such person, firm, corporation or association of persons, for the purpose of producing, manufacturing or generating power or energy.

Section 3 specifically provides that any power that is secured from a person, firm, corporation or association of persons, subject to the tax imposed by Sections 1 or 2 of the Act, shall not be liable for the tax imposed by Section 3.

It is very plain, therefore, that the primary purpose of Act 6 of 1932 is to impose a license tax for the privilege

of producing power. *Union Sulphur Company v. Henry A. Reid*, 17 F. Supp. 32; *State ex rel Porterie, v. Hunt*, 182 La. 1073, 162 So. 777, 103 A. L. R. 9; *Bromley v. McCoughan*, 280 U. S. 124, 50 S. Ct. 46. See also dissenting opinion of Judge Hutcheson in case at bar, (R. 23).

The tax levied by Act No. 6 of 1932 is exacted as a specific privilege tax for the privilege of generating, manufacturing or producing power or energy in the State of Louisiana, and does not, at all, fall upon or condition appellee's privilege of conducting the business of transporting natural gas out of the State in interstate commerce.

Counsel for appellee will probably urge that the tax levied by Act 6 of 1932 is upon the entire business of the appellee, both intrastate and interstate. The Statute involved, as stated elsewhere in this brief, was considered by the Louisiana Supreme Court in the case of *State ex. rel., Porterie v. Hunt, supra*. The Supreme Court of Louisiana in that case, we submit, did not hold that the tax levied by the Statute is upon the entire business of the person, firm, corporation or association of persons manufacturing, producing or generating power or energy. This question was not before the Court in that case. The Supreme Court of Louisiana in the *Hunt Case*, 182 La. 1078, stated the points urged by defendant in that case as follows:

"The defendant attacks the constitutionality of Act No. 6 of 1932 on five grounds, viz.:

"(1) That the tax levied under section 3 is a property tax levied on property which has borne the maximum amount of taxation permitted under article 10, section 3, of the State Constitution.

"(2) That the tax, so far as it applies to defendant, is violative of section 21 of article 10 of the State Constitution, prohibiting the levying of any tax other than a severance tax on oil and gas rights.

"(3) That the tax is violative of section 8 of article 10 of the State Constitution, in that the tax is arbitrarily fixed and is neither classified, graduated, nor progressive.

"(4) That the statute is violative of section 1 of article 10 of the State Constitution (as amended, see Act No. 162 of 1926), requiring that taxation shall be uniform, and of the Fourteenth Amendment of the Federal Constitution, in that it denies defendant the equal protection of the law.

"(5) That the statute is violative of section 2 of article 1 of the State Constitution and of the Fourteenth Amendment to the Federal Constitution, in that it deprives defendant of its property without due process of law.

"We shall discuss and dispose of defendant's contentions in the order of their statement."

The important question before the Louisiana Supreme Court was whether or not the tax levied by Act 6 of 1932 is a property tax or an excise, license or privilege tax, and the Court held that it was an excise, license or privilege tax and it was not levied upon the property itself.

The statute under attack does not undertake to, and does not, lay a tax upon the business of appellee which constitutes interstate commerce, or the privilege of engaging in it. It merely exacts of the appellee, who is engaged in both intra and interstate commerce, as well as others in the State of Louisiana similarly situated, a privilege

tax upon the generation, production or manufacture of power or energy in Louisiana. The uses of that power or energy are not taxed. The business in which the power or energy is used is not taxed. The generation, manufacture or production of the energy, and that alone, is taxed. The measure of the tax is the horsepower capacity of the prime movers employed to generate, manufacture or produce it.

Point II.

ARKANSAS-LOUISIANA PIPE LINE COMPANY ENGAGED IN BUSINESS IN LOUISIANA OF MANUFACTURING OR GENERATING MECHANICAL POWER OR ENERGY: SAID BUSINESS INTRASTATE IN CHARACTER.

The uncontradicted testimony and evidence offered by appellant in the case at bar (R. 77-121), positively show the Arkansas-Louisiana Pipe Line Company is engaged in business in Louisiana of manufacturing or generating mechanical power or energy by the use of internal combustion gas engines.

The opinion of the three judge court (R. 124-125), rendered on the merits of this case, stated that, "There is no dispute as to the physical or mechanical nature of these operations described by the witnesses without, however, accepting the conclusions, or opinions which they advance as to effect." The complete statement by the Court follows, (R. 124-125):

"The evidence before us is the same, except that respondent has offered additional affidavits to show the mechanical operation of the compressor

station and its accessories, together with expert opinions of the witnesses as to the effects. The purpose was to sustain the contention of respondent that there is a distinct operation amounting to a manufacture of mechanical power before it is used to force the gas through the pipe lines and to thereby demonstrate that the case is parallel to that of *Utah Power & Light Co. v. Pfof*, 286 U. S., 165, in which a similar tax was sustained. The further contention is made by defendant from these facts that the gas does not enter the stream of interstate commerce until it passes through the condensers into the twenty-inch pipeline through which it is conveyed to points of sale in the State of Texas and Arkansas. There is no dispute as to the physical or mechanical nature of these operations and we find these additional facts as described by the witnesses without, however, accepting the conclusions or opinions which they advance as to effect."

By order of the Court, the opinion rendered by it on May 22, 1937 (R. 124-132) stands as the findings of fact under Equity Rule 70½, 28 U. S. C. A., Section 723 (R. 133).

The Court, therefore, on the merits in the case at bar, found as facts the testimony and evidence offered by appellant (R. 77-121), as to the "physical or mechanical nature" (R. 125), of the operations of the Arkansas-Louisiana Pipe Line Company at the Munce Station, involved in this litigation.

The facts as to the "physical or mechanical nature" proven by the testimony and evidence offered by appellant, as found by the Court (R. 125), follow:

1. Appellee, (Arkansas-Louisiana Pipe Line Company) owns and operates, at its Munce Station in Lou-

isiana, 10 four cylinder 1000 horsepower Cooper Bessemer Internal Combustion Gas Engines that manufacture or generate mechanical energy or power by converting the heat energy in natural gas into mechanical energy or power, by the method described in the testimony and exhibits in the record. (R. 2, 77-121).

(For complete description of how the mechanical energy or power involved is manufactured or generated from the heat energy in gas, see pages 78 and 79 of the testimony of A. B. Singletary, Jr., an engineer, and Exhibit "A" (R. 91), and page 104 of the Record; also testimony of other witnesses.— (R. 77-121).

2. That mechanical energy or power generated or manufactured by internal combustion gas engines is capable of and is often transmitted long distances to the point where it is used to operate some piece of machinery that requires or is capable of being operated by mechanical energy or power. (R. 83, 106-109; 110-114 and other testimony, R. 77-121).

3. Mechanical power or energy, such as is manufactured or generated by the 10 four cylinder 1000 horsepower internal combustion gas engines operated by the Arkansas-Louisiana Pipe Line Company, can be transmitted to the point of use or consumption by belting, chains, shafting, ropes, etc. (R. 101, and other testimony; R. 110-114).

4. The 10 four cylinder 1000 horsepower internal combustion gas engines used by appellee to manufacture or generate mechanical power or energy are permanently affixed to a concrete foundation at the Munce Station in

Louisiana, and have a permanent situs in this State. (R. 101, 105, 91).

5. The mechanical power or energy generated, manufactured or produced in the manner aforementioned by the 10 four cylinder 1000 horse power internal combustion gas engines is transmitted or conveyed to the machinery of application, or the point of use or consumption, (the compressors), through the medium of rods. (R. 91, 77, 78, 79, 80, 81, 83, 95, 99, 100, 101, 105, 106, 107, 115, 116, 118).

6. The machinery of application, or in other words, the machinery that requires mechanical power or energy in order to perform useful work, and which uses or consumes the mechanical energy or power in the performance of useful work, in the case at bar, are the compressors. (R. 91, 77-81, 83, 95, 99-101, 105-107, 115, 116, 118).

(The mechanical energy or power generated, manufactured or produced by the 10 four cylinder 1000 horsepower internal combustion gas engines is capable of transmission and use in industry and can be used to operate any sort or type of machinery requiring mechanical energy or power (R. 79). The machinery of application (compressors in case at bar) could be at a point distant from the internal combustion gas engines (R. 84), and under such conditions the transmission rods would have to be of sufficient length to convey or transmit the mechanical power or energy to the consuming machinery (R. 84); one internal combustion gas engine can produce, generate and manufacture enough mechanical power or energy to operate several pieces of machinery of application, (R. 84), the mechanical energy or power being transmitted through the medium of rods. [R. 84]).

7. The Arkansas-Louisiana Pipe Line Company, at its Munce plant in Louisiana, operates three separate and distinct units (R. 77, 91, and other testimony 77-121). Each of these units are separate and distinct. (R. 78, 91 and other testimony, R. 77-121).

- (1) The internal combustion gas engine unit, marked Roman Numeral III on Exhibit A (R. 91) is a unit and complete in itself (R. 78 and other testimony R. 77-121).
- (2) The transmission unit is marked Roman Numeral II on Exhibit A (R. 91), and is a separate and distinct unit (R. 77, 79, 99).
- (3) The machinery requiring mechanical energy or power for its operation is the compressor (R. 80). This machinery is marked by Roman Numeral I on Exhibit A (R. 91). This machinery is separate and distinct and complete in itself (R. 77, and other testimony R. 77-121).

8. The Arkansas-Louisiana Pipe Line Company also operates at its Munce Station two 250 horse power internal combustion gas engines (R. 2, 3, 50). These two internal combustion gas engines convert the heat energy in gas into mechanical energy, which is transmitted to and operates two electric generators (50, 2, 3, 93). The electrical energy so generated is used to light buildings, operate machine shops and air compressors (R. 3).

The undisputed testimony and evidence in this case shows that the mechanical energy produced, manufactured or generated from the heat energy of natural gas is a distinct article of commerce, capable of measurement and sale, and at times is measured and sold, (R. 96, and other testimony, 77-121). The record, (R. 96), further shows

conclusively that the mechanical energy produced, manufactured or generated at the Munce Plant in the case at bar has a commercial value independent of the operation of the compressors which use this particular mechanical energy, just as would electrical energy; that in each case, transmission is necessary, whether it be mechanical or electrical energy, to the point of use or consumption.

Point III.

COMPRESSORS.

Funk and Wagnall's New Standard Dictionary, at page 545, defines compressors as follows: "Compressor—A machine or apparatus for compressing air, gases or other substances."

Webster's New International Dictionary, Second Edition, at page 550, defines compressors as follows: "Compressor—A machine for compressing something, as air for motive power."

Compressors are machines complete within themselves and are distinct units and perform a distinct function or work. (R. 77-121).

It requires energy or power to operate compressors. (R. 77-121).

Point IV.

UTAH POWER & LIGHT CO. v. PFOST.

The principle of jurisprudence established by this Court in the case of *Utah Power & Light Company v. Pfof*, 286 U. S. 165, 52 S. Ct. 548, is determinative of the issues in the case at bar. In that case, a suit was brought

to enjoin the enforcement of an act of the Idaho Legislature levying a license tax on the manufacture, generation or production, within the state for barter, sale or exchange of the electricity and electrical energy. The Utah Power & Light Company, a Maine corporation doing business in Utah, Idaho and Wyoming, was engaged in generating, transmitting and distributing electrical power and energy for sale to consumers in three states, and in interstate commerce among them.

The Utah Power & Light Company owned generating stations in Idaho and transmission lines across boundaries into other states. The Utah Power & Light Company, by means of generators, converted the mechanical energy in falling water into electrical energy, and after its generation, the electrical energy was transmitted by means of wires into other states.

The State of Idaho contended that the tax involved in that case was laid upon the generation of electrical energy as a distinct act of production, and without regard to its subsequent transmission. In the case now before the Court, the State of Louisiana contends that the tax is an excise, license or privilege tax for the privilege of generating, producing or manufacturing mechanical energy, and is on the person for the privilege of performing the distinct act of production, without regard to the subsequent use of the energy.

Idaho further contended that the process of generation is one of converting mechanical energy into electrical form; that the resulting change is substantial and is a change in the physical characteristics of the energy in

respect of voltage, current and character as alternating or direct current, according to the design of the mechanical generating devices. The State of Louisiana in the case at bar contends that the change in the form of energy, when the heat energy in natural gas is converted to mechanical energy by use of the internal combustion gas engines, is a change in the physical characteristics of the energy, the mechanical energy thus produced, manufactured or generated being measured by horsepower.

Idaho further contended that the tax was measured by the amount of electrical energy generated, without regard to its subsequent transmission; that such transmission is subsequent to, and separable from, generation, and, in effect, corresponds to the transportation of goods after their manufacture. The State of Louisiana, in the case at bar, contends that the tax levied by the act now before the court is a specific tax for the privilege of generating, manufacturing or producing the mechanical energy or power, irrespective of its subsequent transmission and use, and that the transmission of said mechanical energy or power is subsequent to its manufacture, generation or production, and that the use of the mechanical energy or power by the compressors comes after its manufacture, generation, or production and transmission.

Idaho further contended that the generation of electrical energy was local, and only its transmission was interstate commerce. Louisiana, in the case at bar, contends that the manufacture, production or generation of the mechanical energy or power involved is local and intrastate in character, it being generated, manufactured or

produced by internal combustion gas engines bolted down to concrete and having a permanent situs in Louisiana.

Idaho further contended that since the tax levied by the Idaho Statute was imposed with respect of generation, it was not invalidated by reason of any intent on the part of the producer to transport it across state lines. Louisiana, in the case at bar, contends that the tax levied by the Statute before the Court is imposed in respect of generation, manufacture or production of mechanical power or energy by the internal combustion gas engines, and that the tax is not invalidated by reason of the intent on the part of the producer to transmit such mechanical energy or power to compressors which may be engaged partly in intrastate and partly in interstate commerce.

This Court, in the *Utah* case, sustained the contention of the State of Idaho and upheld the validity of the tax, and in the course of the opinion, said:

"From the foregoing greatly abbreviated but, for present purposes, we think sufficient statement of the views of the respective parties, it is apparent that in the last analysis the question we are called upon to solve is: Upon the facts of the present case, is the generation of electrical energy, like manufacture or production generally, a process essentially local in character and complete in itself; or is it so linked with the transmission as to make it an inseparable part of a transaction in interstate commerce? From the strictly scientific point of view, the subject is highly technical; but in considering the case, we must not lose sight of the fact that taxation is a practical matter, and that what constitutes commerce, manufacture, or production is to be determined upon practical considerations.

"Electrical energy has characteristics clearly differentiating it from the various other forms of energy, such as chemical energy, heat energy, and the energy of falling water. Appellant here, by means of what are called generators, converts the mechanical energy of falling water into electrical energy. Thus, by the application of human skill, a distinct product is brought into being and transmitted to the places of use. The result is not merely transmission; nor is it transmission of the mechanical energy of falling water to the places of consumption; but it is, first, conversion of that form of energy into something else, and, second, the transmission of that something else to the consumers. While conversion and transmission are substantially instantaneous; they are, we are convinced, essentially separable and distinct operations. The fact that to ordinary observation there is no appreciable lapse of time between the generation of the product and its transmission does not forbid the conclusion that they are, nevertheless, successive and not simultaneous acts.

"The point is stressed that in appellant's system electricity is not stored in advance, but produced as called for. The consumer in Utah, it is said, by merely turning a switch, draws directly from the water fall in Idaho, through the generating devices, electrical energy which appears instantaneously at the place of consumption. But this is not precisely what happens. The effect of turning the switch in Utah is not to draw electrical energy directly from the water fall, where it does not exist except as a potentiality, but to set in operation the generating appliances in Idaho, which thereupon receive power from the falling water and transform it into electrical energy. In response to what in effect is an order, there is production as well as transmission of a definite supply of an article of trade. The manufacture to order

of goods and their immediate shipment to the purchaser furnishes a helpful analogy, notwithstanding the fact that there the successive steps from order to delivery are open to physical observation, while here the succession of events is chiefly a matter of inference; although inference which seems unavoidable. The process by which the mechanical energy of falling water is converted into electrical energy, despite its hidden character, is no less real than the conversion of wheat into flour at the mill.

"The apparent difficulty in perceiving the analogy arises principally from the fact that electrical energy is not a substance; at least in common meaning. It cannot be bought and sold as so many ounces or pounds, or so many quarts or gallons. It has neither length, breadth, nor thickness. But that it has actual content of some kind is clear, since it is susceptible of mechanical measurement with the necessary certainty to permit quantitative units to be fixed for purposes of barter, sale, and exchange. However lacking it may be in body or substance, electrical energy, nevertheless possesses many of the ordinary tokens of materiality. It is subject to known laws; manifests definite and predictable characteristics; may be transmitted from the place of production to the point of use and there made to serve many of the practical needs of life.

"We think, therefore, it is wholly inaccurate to say that appellant's entire system is purely a transferring device. On the contrary, the generator and the transmission lines perform different functions, with a result comparable, so far as the question here under consideration is concerned, to the manufacture of physical articles of trade and their subsequent shipment and transportation in commerce." * * *

The only difference, we submit, between the *Pfost* case *supra*, and the case at bar, is that the new product, of value commercially, capable of measurement and sale, is manufactured, transmitted and used by the same person, whereas in the *Utah* case, the new product was transmitted and sold to another party.

Point V.

MECHANICAL ENERGY OR POWER IS PROPERTY, AND ITS PRODUCTION, GENERATION, OR MANUFACTURE IN CASE AT BAR IS LOCAL AND INTRASTATE OPERATION.

In the recent case of *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 330; 56 S. Ct. 466, 475, this Honorable Court held that, "the mechanical energy was convertible into electric energy, and the water power, the right to convert it into electric energy, and the electric energy thus produced constitute property belonging to the United States. See *Green Bay & M. Canal Company v. Patten Paper Company*, 172 U. S. 58, 80, 19 S. Ct. 97, 101, 43 L. Ed. 364; *United States v. Chandler-Dunbar Water Power Company*, 229 U. S. 53, 72, 73, 33 S. Ct. 667, 57 L. Ed. 1063; *Utah Power & Light Co. v. Pfost*, 286 U. S. 165, 170, 52 S. Ct. 548, 76 L. Ed. 1038."

It would certainly follow that the mechanical energy produced, generated, and manufactured by appellee by converting the heat energy in natural gas into mechanical energy would be property, and the production, manufacture and generation of this property, which is a distinct article of commerce, capable of measurement and sale, capable of

transmission to the point of use, is an intrastate function and operation, even though the new product, viz., mechanical energy, may be used to further interstate commerce. The tax is on the privilege of producing, manufacturing, and generating the new product in Louisiana, and is not on the use nor on the business in which it is used. The Court, in the recent case of *Carter v. Carter Coal Company*, 298 U. S. 238, 303; 56 S. Ct. 855, 869, said:

"In *Oliver Iron Co. v. Lord*, 262 U. S. 172, 178, 43 S. Ct. 526, 529, 67 L. Ed. 929, we said on the authority of numerous cited cases: 'Mining is not interstate commerce, but like manufacturing, is a local business, subject to local regulation and taxation. * * * Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce.'

"The same rule applies to the production of oil. 'Such production is essentially a mining operation, and therefore is not a part of interstate commerce, even though the product obtained is intended to be and in fact is immediately shipped in such commerce.' *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210, 235, 52 S. Ct. 559, 565, 76 L. Ed. 1062, 86 A. L. R. 403. One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the

state; in respect of the latter, to regulation only by the federal government. *Utah Power & L. Co. v. Pfost*, 286 U. S. 165, 182, 52 S. Ct. 548, 76 L. Ed. 1038. Production is not commerce; but a step in preparation for commerce. *Chassaniol v. Greenwood*, 291 U. S. 584, 587, 54 S. Ct. 541, 78 L. Ed. 1004."

Measurement and Sale of Mechanical Energy or Power.

Mechanical energy or power can be transmitted long distances and can be sold. It can be sold at a flat rate per horsepower or by the horsepower hour, day, month or year. If sold by a flat rate per horsepower, it is only necessary for the vendee to determine how much horsepower he needs for his power consuming unit. This method is applicable where the power required by the vendee is constant or continuous. If for instance, the power consuming unit is a pump, handling water or other liquid, knowing the volume handled in gallons per minute and the head against which the pumps act in pounds per square inch, the horsepower of this unit is determined by the use of the formula: Horsepower equals gallons per minute times pounds per square inch head divided by a constant. See "*Kent's Mechanical Engineer's Handbook, Tenth Edition*," page 823.

If the power requirements are variable, it is necessary that a recording transmission dynamometer be installed between the prime mover of the vendor and the power consuming unit of the vendee in order to ascertain the amount of power consumed in horsepower hours, days, months or years. See "*Experimental Engineering*" by

Rolla C. Carpenter, M. S., C. E., M. M. E.; Second Revised Edition, page 219.

This recording transmission dynamometer performs a function similar to the watt hour meter used in recording the amount of electrical energy or power sold.

Point VI.

APPELLEE'S INTRASTATE OPERATIONS IN LOUISIANA: PRODUCTION AND GATHERING OF GAS: PRODUCTION OF MECHANICAL ENERGY.

The three-judge court, in the opinion making the preliminary injunction permanent, (R. 125), states that: "As the name indicates, the plaintiff's business is one of transporting natural gas by pipe line, more than 96% of which is done in interstate commerce, as conclusively as if it operated tank cars in transporting the kindred mineral, crude oil, into the other states for sale." We submit, with respect, that it is only in transmitting gas across the state lines that appellee is engaged in interstate commerce. Appellee is also engaged in Louisiana in the business of producing, buying, transporting and selling natural gas, (R. 3). As a producer of natural gas in Louisiana, appellee must pay the State of Louisiana the Severance Tax levied by the laws of the State of Louisiana for the privilege of severing the gas. *Gulf Refining Company of Louisiana v. McFarland*, 154 La. 251, 97 So. 433. Certainly, the production or mining of gas is an intrastate or local business operation. Certainly then, the statement by the Court to the effect that plaintiff's business is one

of transporting natural gas by pipe line, in interstate commerce only, is not altogether borne out by the record.

Further, we submit, with respect, that it is only in transmitting gas across the state lines that appellee is engaged in interstate commerce. We submit that the mechanical power or energy generated, manufactured or produced by the 10 four cylinder 1000 horsepower internal combustion gas engines, which are bolted down to concrete and have a permanent situs in Louisiana, is also a local business, and intrastate in character, just as is the production or mining of gas, notwithstanding the fact that the mechanical energy or power may be transmitted and used to operate machines (compressors) that are used to produce gas and load it into a 20-inch main pipe line that ultimately carries part of the gas out of the State. The excise, license or privilege tax involved herein is on the local or intrastate business of manufacturing, generating or producing the mechanical energy or power, and is not levied on the use of the mechanical energy or power and can not be a direct burden on interstate commerce in the case at bar. This Honorable Court has repeatedly recognized the distinction between manufacture, generation or production and transportation, and ultimate uses of the product manufactured, generated or produced. Authorities recognizing these distinctions and supporting the view of the appellant expressed herein, are: *Oliver-Iron Mining Co. v. Lord*, 262 U. S. 172; *Hope Natural Gas Co. v. Hall*, 274 U. S. 284; *Cbe v. Errol*, 116 U. S. 517; *c/f Federal Compress Warehouse Co. v. McLean*, 291 U. S. 17; *Carson Petroleum Co. v. Vial*, 279 U. S. 95; *Schecter Poultry Corp. v. United States*, 295 U. S. 495.

Point VII.**ERROR TO COMPARE GENERATION, PRODUCTION, OR MANUFACTURING OF MECHANICAL ENERGY IN CASE AT BAR BY ENGINES WITH PERMANENT SITUS IN LOUISIANA, TO LOCOMOTIVES PULLING INTER-STATE TRAIN.**

Counsel for appellee will probably urge in oral argument to this Honorable Court that to sustain the levy herein involved would be to say that a tax for the privilege of generating power in a locomotive pulling an interstate train would be valid. We submit, with respect, that such is not the case, and that the principles involved are easily distinguished. In the first place, Act 6 of 1932 levying the tax involved, in Section 3, specifically exempts the production, generation, or manufacture of any power which is used to propel any automobile, truck, tug, vessel or other self-propelled vehicles on land, water or air. Even if this exemption was not contained in the statute, any attempt by the State of Louisiana to levy an excise, license or privilege tax for the privilege of manufacturing, generating or producing mechanical energy, which is used to propel a locomotive pulling an interstate train through the State of Louisiana, would be a direct burden on interstate commerce.

The internal combustion gas engines in the case at bar are bolted down to concrete at the Munce plant and have a fixed and permanent situs in the State of Louisiana. They remain at this one place and, when operated, manufacture, generate or produce mechanical energy that is taken from this point of manufacture, production or gen-

eration to the point of use or consumption by means of transmission rods. The internal combustion gas engines do not form the part of any self-propelled vehicle, and the mechanical energy or power manufactured, generated or produced by that is comparable in every respect to the generation of electricity at a power plant having a permanent situs within the State. Certainly, an excise, license or privilege tax for the purpose of manufacturing, generating or producing electrical power at a local power plant would not be a direct burden on interstate commerce, even though the electrical energy or power thus manufactured, produced or generated is transmitted to and used by an electric train operating across state lines. We submit, with respect, that the attempted comparison of the internal combustion gas engines in the case at bar to the manufacture of mechanical energy on a locomotive pulling an interstate train is without merit.

Point VIII.

IN VIEW OF TESTIMONY AND EVIDENCE, ENGINES, TRANSMISSION RODS, AND COM- PRESSORS CANNOT BE CLASSIFIED AS A SINGLE UNIT.

Appellee offered testimony to the effect that the internal combustion gas engines which produce or generate mechanical power by converting heat energy in gas into mechanical energy or power, the transmission rods which transmit the power or energy to the consuming units, (compressors), should be treated as one unit by the court, for the reason that, as asserted by a witness for appellee, the only purpose which the power or energy so manufactured, produced or generated could be used for is to operate the com-

pressor units at the Munce Station. Certainly, the Court cannot take such testimony seriously, in view of the vast preponderance of the testimony offered by expert witnesses on behalf of appellant which conclusively shows otherwise, (R. 77-121). The testimony offered by the appellant conclusively shows that the mechanical energy manufactured, produced or generated by the internal combustion gas engines at the Munce Station could be used for any purpose where mechanical energy is needed; that is, to operate pumps, compressors, or in fact any machinery requiring mechanical power, (R. 77-121). This mechanical power manufactured, produced or generated at the Munce Station could be transmitted by the use of rods or belting for great distances to the point of consumption. (R. 105-114).

Point IX.

IF APPELLEE PURCHASED MECHANICAL ENERGY OR POWER MANUFACTURED IN LOUISIANA, PRODUCER WOULD BE ENGAGED IN LOCAL OR INTRASTATE OPERATION.

For the sake or argument, assume that the appellee purchased the mechanical energy or power used to operate the compressors or consuming units. If this were true, the same situation would exist as exists in the case at bar, except that someone else would own the manufacturing, producing or generating units; that is, the internal combustion gas engines. The power or energy would be produced, manufactured or generated in the same manner and transmitted to the compressors or consuming units, in the same manner, except possibly the transmission rods would

be of greater length, as shown in the testimony of Mr. Gaudet, (R. 105-114): The production of the mechanical energy would be intrastate in character. It follows that where appellee elects to manufacture its own mechanical energy, it is engaged in a local operation.

Point X.

IF APPELLEE PRODUCED MECHANICAL POWER OR ENERGY FOR SALE IN LOUISIANA, OPERATION WOULD BE LOCAL OR INTRASTATE.

If the internal combustion gas engine units, situated at the Munce Station, and involved in the litigation at bar, were owned and operated by appellee for the purpose of manufacturing mechanical power or energy, and the mechanical power or energy so manufactured, generated or produced, was transmitted to distant points and sold to consumers, who use the power or energy to operate pumps, compressors, or similar mechanical or consuming units, certainly the business of appellee would be intrastate or local in character, even though the rods transmitting the power might extend across state lines. Appellee has elected, in the case at bar, to generate, manufacture or produce its own mechanical energy or power by the use of internal combustion gas engines at the Munce plant, and transmit it to the consuming units, the compressors, by means of the transmission rods. Certainly, this endeavor of appellee in manufacturing or generating its own mechanical energy or power and transmitting it to the consuming units; that is, the compressors, is intrastate business, just as much so as the manufacture or generating of electrical energy or power in the *Pfost* case, *supra*.

The manufacture, production and generation of the mechanical energy or power at the Munce Station by appellee is just as much intrastate business as would be the manufacture of piping or any other equipment that is ultimately used by appellee in its interstate business. There is no doubt but that appellee would be engaged in intrastate or local business if it elected to manufacture its own 20-inch piping there at the Munce Station. It is true the piping would be consumed or used in the furtherance of interstate transportation, but the manufacture of such materials or supplies would be intrastate in character and subject to state control and taxation.

Point XI.

MORE ECONOMICAL FOR APPELLEE TO OPERATE ENGINES AND COMPRESSORS IN CLOSE PROXIMITY.

The testimony and evidence in the case at bar clearly show that the only reason the internal combustion gas engines, which manufacture, generate or produce mechanical power by converting the heat energy in natural gas into mechanical power, are directly connected to the compressor units by the rods of transmission, which transmit the mechanical energy from the producing or manufacturing units to the units of consumption, is that it has been found to be more economical to operate the machinery of manufacture, generation and production in close proximity to the consuming machinery; that is, the machinery that requires mechanical power or energy to do useful work, (R. 103-105).

The record further shows that, originally, the manufacturing, generating or producing unit was not operated in such close proximity to the machinery requiring mechanical energy, (R. 103-105). Before the manufacturing, generating and producing unit was made to operate in close proximity to the machinery of application, that is, the compressors, the mechanical energy, after its manufacture, generation or production by the internal combustion gas engines, was transmitted to the consuming unit, that is, the compressors, by means of a system of belting.

Photographs introduced in evidence in connection with the testimony of Mr. Gaudet, (R. 105-114), a mechanical engineer who qualified as an expert witness, show how mechanical energy is manufactured from the heat energy in gas and transmitted over long distances through a system of rods, similar to those in the case at bar, to the point of consumption, (R. 110-114).

Point XII.

WRITTEN OPINION BY UNITED STATES CIRCUIT JUDGE JOSEPH C. HUTCHESON, JR., DISSENTING TO THE ISSUANCE OF A PRELIMINARY INJUNCTION IN CASE AT BAR.

This case was argued before a United States District Court of three judges three times. The first time the case was up for argument on the question of whether or not a preliminary injunction should issue, it was argued before a three judge court composed of United States Circuit Judge Rufus E. Foster, and United States District

Judges Wayne G. Borah and Ben C. Dawkins. As a result of this hearing, the Court held Act No. 6 of 1932, involved herein, unconstitutional on several grounds, and further held that the tax involved was a direct burden on interstate commerce insofar as the Arkansas-Louisiana Pipe Line Company was concerned, (R. 14).

Appellant at this first hearing did not offer any testimony. Before this case was set for trial on the merits, an application for a rehearing was filed, based on a decision by the Supreme Court of Louisiana in the case of *State ex rel. Porterie, et al., v. H. L. Hunt, Incorporated*, 182 La., 107, 162 So. 777. (R. 18-19).

The application for a rehearing was granted, (R. 19). The case was then argued on rehearing on the question of whether or not a preliminary injunction should issue. The United States District Court of three judges, at this second hearing, was composed of United States Circuit Judge Joseph C. Hutcheson, Jr., United States District Judges Wayne G. Borah and Ben C. Dawkins. As the result of this hearing, United States Judges Wayne G. Borah and Ben C. Dawkins sustained the constitutionality of Act No. 6 of 1932, but held that the tax levied by the Act, insofar as the Arkansas-Louisiana Pipe Line Company is concerned, is a direct burden on interstate commerce, (R. 20).

Judge Hutcheson, however, in a written opinion, (R. 23), dissented from the ruling of the majority on the

question of the tax involved being a direct burden on interstate commerce.

Judge Hutcheson agreed with the State in his opinion, (R. 23), that the purpose of Act No. 6 of 1932, involved herein, is to levy a license tax for the privilege of producing power in the State of Louisiana. Judge Hutcheson's dissenting opinion is very short and to the point, and for the convenience of the Court, it is included in this brief.

"DISSENTING OPINION

"HUTCHESON, CIRCUIT JUDGE, dissenting:

"The primary purpose of the statute appears to have been to impose a license tax upon the production of power. It thus imposed not a property, but an excise or privilege tax. *Union Sulphur Co. v. Reid*, this day decided. *State ex rel Porterie v. Hunt*, 62 So. 777; *Bromley v. McCaughan*, 290 U. S. 124.

"The majority concludes that because the tax is a privilege, and not a property tax, and falls on the generation by complainant of power, used in part to gather gas in to, and in part to transport it through its transportation lines, it is a direct and undue burden on interstate commerce. I do not think so.

"The majority considers the tax a license tax upon the business or occupation of transporting gas in interstate commerce; that is, the business of purchasing gas in one state and selling it in another. I do not think so. If I could agree that the tax was occupational, levied on the general business of complainant, that of acquiring and conducting gas interstate, I could agree with the majority that the

case is ruled by *Cooney v. Mountain States T. & T. Co.*, 294 U. S. 384, and that the tax is invalid. I cannot, however, agree to this. I think it quite plain that the tax is not imposed on complainant as a license tax, for the general privilege of transacting its business. It is exacted as a specific privilege tax, for the privilege of generating power in the State. It does not at all fall upon or condition its privilege of conducting the business of transporting gas interstate.

"In the *Cooney* case this distinction is made clear. There is said 'There is no question that the State may require payment of the occupation tax from one engaged in both intrastate and interstate commerce.' c/f *East Ohio Gas Co. v. Tax Commission*, 283 U. S. 465, 'But a State cannot tax interstate commerce; it cannot lay a tax upon the business which constitutes such commerce, or the privilege of engaging in it.'

"The statute under attack here does not undertake to, it does not, lay a tax upon the business which constitutes interstate commerce, or the privilege of engaging in it. It exacts of complainant, who is engaged in both intra and interstate commerce, as well as of all others in the State of Louisiana similarly situated as to the use of prime movers, a privilege tax upon the generation of power in Louisiana. The uses of that power are not taxed. The business in which the power is generated is not taxed. The generation of the power, and that alone, is taxed. The measure of it, is the horse power capacity of the 'prime movers' employed to generate it.

"The majority regards as inapplicable *Utah Power & Light Co. v. Pfof*, 286 U. S. 165. I think that case controlling. There the generation of electrical energy which was the subject of the tax was followed immediately by its transmission to other

states. Here, as there, the tax is upon the production of energy. Here, as there, that production is taxable, for here, as there, the tax is laid on the manufacture or production of energy, and not on its transfer or conveyance to distant states. Here, as there, the tax is laid upon the generation of power as a distinct act of production, and without regard to its subsequent use. Here, as there, so far as complainant produces energy in Louisiana, its business is purely intrastate, subject to State taxation and control. It is only in transmitting as across the State lines by the use of this power that defendant is engaged in interstate commerce.

"Other cases supporting this view are, *Oliver-Iron Mining Co. vs. Lord*, 262 U. S. 172; *Hope Natural Gas Co. vs. Hall*, 274 U. S. 284; *Coe vs. Errol*, 116 U. S. 517; *c/f Federal Compress Warehouse Co. vs. McLean*, 291 U. S. 17; *Carson Petroleum Co. vs. Vial*, 279 U. S. 95; *Schechter Poultry Corp. vs. United States*, 295 U. S. 495.

"I am also of the opinion that defendant is right in its contention that if the tax may be held to be on interstate commerce, it falls on it not directly, but indirectly and therefore does not violate the Commerce Clause. *Port Richmond vs. Board of Chosen Freeholders*, 232 U. S. 317; *Wiggins Ferry Co. v. East St. Louis*, 170 U. S. 365; *State vs. Albert Mackie*, 144 La. 339; *Krauss Lumber Co. vs. Board of Assessors*, 148 La. 1057; *Baltic Mining Co. vs. Massachusetts*, 231 U. S. 68; *Hump Hairpin Mfg. Co. vs. Emerson*, 258 U. S. 290.

"When a tax is as here levied on all similarly situated, and in terms is not upon the business done, so that it appears on the face of the statute that 'it is clear that it is not imposed with the covert purpose, or with the effect to defeat constitutional rights,' *Hump Hairpin Mfg. Co. vs. Emerson*, *supra*,

it is not a prohibited burden on interstate commerce. It is a valid exercise of the power of the State to tax.

"With respect, therefore, I dissent."

Judge Hutcheson was evidently so firmly of the opinion that the State's position in the case at bar is correct, he held that the Arkansas-Louisiana Pipe Line Company, appellee herein, was not even entitled to a preliminary injunction.

The case was argued for the third time before a United States District Court of three judges on February 12, 1937. The three-judge court hearing the case the third time, and this time on the question of whether or not the preliminary injunction issued should be made permanent, was composed of United States Circuit Judge Rufus E. Foster, and United States District Judges Wayne G. Borah and Ben C. Dawkins. On May 24, 1937 (R. 124), the three-judge court rendered a decision granting a permanent injunction, enjoining the State from collecting the taxes alleged to be due by the Arkansas-Louisiana Pipe Line Company.

Stress is laid upon the opinion of Judge Hutcheson, set out herein, and it is, with the greatest respect, urged that the Court give this opinion of Judge Hutcheson's very careful consideration for the reason that we submit, with respect, the testimony and evidence offered by the State, and even the findings of fact of the three-judge court making the injunction permanent, conclusively show that the opinion rendered by Judge Hutcheson is fully substantiated by the facts in the record and the law.

Point XIII.

EVEN IF THE COURT SHOULD HOLD THE COMPRESSORS, THE TRANSMISSION RODS, AND THE INTERNAL COMBUSTION GAS ENGINES ARE ALL INSTRUMENTALITIES OF INTERSTATE COMMERCE, THE TAX LEVIED BY SECTION 3 OF ACT 6 OF 1932 IS NOT A DIRECT BURDEN ON INTERSTATE COMMERCE BUT IS INDIRECT AND, THEREFORE, IS NOT IN VIOLATION OF THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION.

Section 3 of Act 6 of 1932 levies an excise, license or privilege tax. *State v. Hunt, supra*. It is levied on the person, firm, corporation or association of persons for the privilege of generating, manufacturing or producing electrical or mechanical power by the use of prime movers. The measure of the tax is the rated horsepower capacity of the prime movers (internal combustion gas engines). There is no tax levied on the prime movers. The prime movers, or internal combustion gas engines, are all bolted down to concrete at the Munce Station and have a permanent situs in the State of Louisiana.

The case of *Wiggins Ferry Co. v. City of East St. Louis*, 2 S. Ct. Rep. 257, 267, involved the following proposition: The Legislature of Illinois authorized Samuel Wiggins to establish a ferry upon the waters of the Mississippi River from East St. Louis, Illinois to St. Louis, Missouri. The City of East St. Louis, Illinois, levied an occupational license tax on persons engaged in various oc-

cupations and included in the list of occupations was the operation of a ferry, with the tax measured by the number of boats used in the ferry service. Wiggins was a resident of East St. Louis, Illinois. The property used in his business was situated in East St. Louis, Illinois, and the boats used in his business were kept in East St. Louis, Illinois. The tax ordinance was attacked on the ground that the tax involved was a direct, therefore unlawful, burden on interstate commerce, Wiggins being engaged exclusively in the transportation of passengers and freight from one state to another.

This Court upheld the tax stating that the tax did not interfere with interstate commerce; that the tax was on the individual and was simply measured by the number of boats used in the business.

In the course of the opinion, this Honorable Court, said:

"The next question presented by the assignments of error relates to the power of the state to impose a license fee either directly or through one of its municipal corporations upon the keepers of ferries living in the state, for boats owned by them and used in ferrying passengers and goods from a landing in the state, across a navigable river, to a landing in another state. It is insisted by the plaintiff in error that such an exaction is forbidden by the constitution of the United States, (1) because it is a regulation of commerce between the states and therefore, within the exclusive power of congress; and (2) because it is a duty of tonnage, which the states are forbidden by the constitution to lay without the consent of congress.

"In our opinion neither of these contentions is well founded. The levying of a tax upon vessels or other

water-craft, or the exaction of a license fee by the state within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the constitution of the United States. *Gibbons v. Ogden*, 9 Wheat. 1; *The Passenger Cases*, 7 How. 283; *Morgan v. Parham*, 16 Wall. 471. In *Gibbons v. Ogden* it was settled that the clause of the constitution conferring on congress the power to tax, and the clause regulating and restraining taxation, are separate and distinct from the clause granting the power to congress to regulate commerce. In all of the cases just cited the right of a state to tax a ship owned by one of her citizens and having its situs within the state, although used in foreign commerce or in commerce between the states, was distinctly recognized. Thus, in *The Passenger Cases*, it was said by Mr. Justice McLean:

“‘A state cannot regulate foreign commerce, but it may do many things which more or less affect it. It may tax a ship or other vessel used in commerce the same as other property owned by its citizens. A state may tax the stages in which the mail is transported, but this does not regulate the conveyance of the mail any more than taxing a ship regulates commerce; and yet, in both instances, the tax on the property in some degree affects its use.’

“In the first place, the license fee is levied, not on the ferry boat, but on the ferry-keeper. The first section of the ordinance declares that no person shall carry on any trade, business, calling, or profession thereafter mentioned without having first obtained a license therefor, and the ordinance, after having enumerated many other trades and callings, and fixed the license fee for carrying them on, declares, in section 10, that keepers of ferries shall pay \$100 license fee for each boat plying between the city and the opposite bank of the river.

"Whether a license fee is exacted under the power to regulate or the power to tax is a matter of indifference if the power to do either exists. The license fee exacted is, in effect, laid upon the business of keeping a ferry, for it is not laid upon all boats owned by the ferry-keeper, but only on those plying between the two banks of the river, and is graduated by the number of boats used by him."

In the case of *Port of Richmond & B. P. F. Company v. Board of Freeholders*, 34 S. Ct. 821, 234 U. S. 317, the Supreme Court of the United States, in discussing the case of *Wiggins Ferry Company v. East St. Louis*, *supra*, said:

"These cases were cited with approval in *Wiggins Ferry Company v. East St. Louis*, 107 U. S. 365, 27 L. ed. 419, 2 Sup. Ct. Rep. 257. There, the ferry company was an Illinois corporation and held a franchise granted by the legislature of that state for the operation of a ferry from East St. Louis, Illinois to St. Louis, Missouri. The payment of a license tax imposed upon the company in Illinois, for the privilege of conducting the ferry, was resisted under the commerce clause, but the contention was overruled, the court holding that 'the levying of a tax upon vessels or other water-craft, or the exaction of a license fee by the state within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the Constitution. (*Id.* p. 373).

"It is manifest, however, that the transportation of persons and property from one state to another is none the less interstate commerce because conducted by ferry; and it is not open to question that ferries maintained for that purpose are subject to the regulating power of Congress. It necessarily follows that whatever may properly be regarded as a direct burden upon interstate commerce, as conducted by ferries operating between states, it is beyond the

competency of the states to impose. This was definitely decided in *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 29 L. ed. 158, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826. The commonwealth of Pennsylvania had imposed a tax upon the ferry company, based upon the estimated value of its capital stock, upon the ground that it was doing business within the state.

"The company was incorporated in New Jersey and maintained a ferry from Gloucester, in that State, to Philadelphia. Save for the wharf that it leased at the latter place, its property, including its boats, had its situs in New Jersey; and its entire business consisted in ferrying. The tax upon the 'receiving and landing of passengers and freight at the wharf in Philadelphia,' which was a necessary incident to the transportation across the Delaware river, was a tax upon that transportation; and in this view the tax was held to be void as one laid upon interstate commerce."

The *Wiggins Ferry Company* case, *supra*, was also referred to by the Supreme Court in the case of *Postal Telegraph Cable Company v. City Council*, 14 S. Ct. 1094, 153 U. S. 692. In this case the Supreme Court interpreted the *Wiggins* case, and in so doing, said:

"In *Wiggins Ferry Company v. City of East St. Louis*, 107 U. S. 376, 2 Sup. Ct. 257, where a ferry company, authorized by an act of assembly of the state of Illinois to carry on its business, and paying state taxes prescribed in its charter, was called upon by a city ordinance to pay a license tax, it was held by this court that the exaction of a license fee is an ordinary exercise of police power by municipal corporations; that the power of the state to authorize any city within its limits to enforce a license tax on trades or callings generally, especially those which are quasi public, cannot be disputed; and

that whether a license fee is exacted under the power to regulate or the power to tax is a matter of indifference if the power to do either exists."

In the case of *Covington & C. Bridge Company v. Commonwealth*, 14 S. Ct. 1087, 154 U. S. 204, the United States Supreme Court again interpreted the jurisprudence established by the *Wiggins* case, as follows:

"So, too, in *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365, 2 Sup. Ct. 257, it was held that a state had the power to impose a license fee, either directly or through one of its municipal corporations, upon ferry keepers living in the state, for boats which they owned and used in conveying from a landing in the state, passengers and goods across a navigable river to another state. It was said that 'the levying of a tax upon vessels or other water craft, or the exaction of a license fee by the state within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the constitution of the United States.'"

If the court should hold that the Prime Movers located at Sterlington, Louisiana, are instrumentalities of interstate commerce, which is denied, then it is seriously urged that the jurisprudence established by the *Wiggins* case, and all the cases cited in this brief wherein the jurisprudence established by the *Wiggins* case is approved, and other cases, conclusively show that the excise, license or privilege tax levied by Section 3 of Act 6 of 1932 is not, under the established jurisprudence of the Supreme Court of the United States, a direct burden on interstate commerce within the meaning of the commerce clause in the Federal Constitution. In the *Wiggins Ferry Case*, *supra*, the rate of tax or the measure of the tax was the number

of ferry boats used in transporting passengers from East St. Louis, in the State of Illinois, to the City of St. Louis, in the State of Missouri. The court held that the ferries had a situs in East St. Louis. In the case at bar the Prime Movers certainly have a situs in Louisiana. They are bolted down to concrete foundations.

Further, as was the tax in the *Wiggins* case, the tax involved in the case at bar is constant and fixed. It is a tax levied on persons, firms, corporations and associations of persons for the privilege of generating power, and is at a fixed rate per horsepower capacity of the equipment and does not fluctuate with the amount of operation. In other words, if the internal combustion gas engines are operated one day or three hundred and sixty-five days, the tax remains the same. Increased use does not increase the tax.

In the case of *State v. Albert Mackie Co.*, 144 La. 339, the Supreme Court of Louisiana exhaustively reviewed decisions of the Supreme Court of the United States wherein the question of what involved the direct burden on interstate commerce was discussed. Justice O'Niell, the organ of the court, in construing the jurisprudence established by the Supreme Court of the United States, as to what constitutes a direct burden on interstate commerce, said:

"*Nathan v. Louisiana*, 8 How. (49 U. S.) 73, 12 L. Ed. 992, is authority for the proposition that a state is not prohibited from levying a license tax upon a business or occupation such as that of a money or exchange broker, merely because the broker is engaged in selling only foreign bills of exchange. The license tax in that case was not graduated or measured by the volume of business

done, but was a fixed tax upon every such business or occupation; hence, if it affected foreign commerce at all, it did so only incidentally, not directly. It is well settled that a state tax that affects interstate or foreign commerce only incidentally and not directly, as, for example, a tax upon property that is used in such commerce, or a tax upon net incomes or profits that have been derived from such commerce, or a fixed tax levied upon a local business without discriminating against interstate business, is not repugnant to the commerce clause of the federal Constitution (article 1, Sec. 8). The important feature of the case before us that distinguishes it from the case cited is that the tax in question is graduated or measured, in part, by the volume of interstate and foreign business done, and is therefore a direct interference with, or regulation of, that commerce. The mandate in the state Constitution now prevailing, to graduate license taxes, does not and could not require an interference with interstate or foreign commerce.

"In the case of *Maine v. Grand Trunk Railway Co.*, 142 U. S. 217, 12 Sup. Ct. 121, 35 L. Ed. 994, the tax in question was an annual excise tax imposed upon every railroad company for the privilege of exercising its franchise within the state. The tax was graduated or measured according to the gross transportation receipts of the railroad within the state. But, with regard to railroads extending beyond the state line, the gross receipts of the railroad operated within the state were ascertained or estimated by multiplying the number of miles of road within the state by the average gross receipts per mile of the entire road extending within and without the State. That was not a tax upon the interstate transportation receipts. It was not even regulated or graduated or measured in proportion to the receipts from interstate transportation; be-

cause the average of receipts per mile of road extending beyond the state might have been more or less than the average receipts per mile of road within the state, without affecting the average receipts per mile of the entire road, which latter average was adopted merely as an estimate of, and was perhaps the only means of estimating the average receipts per mile of road within the state. The tax, therefore, was not a burden upon, or a regulation of, the transportation business done outside of or beyond the state.

"In *Ficklen v. Taxing District*, 145 U. S. 1, 12 Sup. Ct. 810, 36 L. Ed. 601, the license tax in contest, levied upon all factors or brokers for doing a local business, was not graduated on gross sales or receipts, but was a fixed tax of \$50 per annum, plus an ad valorem tax of 10 cents on every \$100 of capital invested or used in the business, provided that, where there was no capital invested, a charge of $2\frac{1}{2}$ per cent. was levied on the gross yearly commissions, charges, or compensations. The fixed tax was not a direct burden upon any interstate commerce done by a factor or broker, nor was the ad valorem tax on capital located in the taxing district invalid. And the decision that the tax of $2\frac{1}{2}\%$ on the gross yearly commissions, charges, or compensations was valid might be justified on the ground that the commissions, charges, or compensations received by the factor or broker was his net earnings or profits.

"In *United States Glue Co. v. Town of Oak Creek*, 247 U. S. 321, 38 Sup. Ct. 499, 62 L. Ed. 1135, Ann. Cas. 1918E, 748, the tax in contest was levied upon the net income or profits earned by the corporation, not upon its gross receipts; and the ruling was that the tax was not invalid, as an interference with interstate commerce, to the extent that the net income or profits was earned in interstate commerce. The net income or profit earned by a

person is his property, and a tax upon it, graduated in proportion to its value, is not a direct burden upon—because it has little or no deterring effect upon—the business or commerce from which the net income or profit is derived. The distinction between a direct burden upon commerce, such as results from a tax that is graduated in proportion to the gross receipts of a business, and an indirect burden, such as results from a tax that is graduated in proportion to the net income or profits of a business, was drawn very clearly in the discussion of the subject in the case last referred to. Tested by the rule there furnished, the tax in contest here, in so far as it is imposed upon or measured by the gross receipts from sales made in interstate or foreign commerce, is a direct burden upon the commerce, and is therefore to that extent invalid.”

It will be observed that, under the jurisprudence reviewed by the Louisiana Supreme Court, as established by the United States Supreme Court, to be a burden on interstate commerce, a tax must be increased by the volume of the interstate commerce. This seems to be well established. In the case at bar the tax is constant, fixed and does not fluctuate with the amount of commerce done. The levy under Act 6 of 1932 is the same irrespective of the volume or flow of interstate commerce.

In the case of *Krauss Brothers Lumber Company v. Board of Assessors*, 148 La. 1057, the Supreme Court of Louisiana, in further discussing this same question, said:

“Appellant relies also upon the decision of the United States Supreme Court maintaining the general doctrine that a state tax which, in effect, regulates or interferes with interstate commerce is a violation

of the commerce clause of the Constitution of the United States, no matter what name the tax may bear or what was the purpose of its being imposed. In support of the doctrine last stated, appellant relies particularly upon the rulings in *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 30 Sup. Ct. 190, 54 L. Ed. 355; *Looney v. Crane*, 245 U. S. 178, 38 Sup. Ct. 85, 62 L. Ed. 230; *Crew-Levick v. Pennsylvania*, 245 U. S. 292, 38 Sup. Ct. 126, 62 L. Ed. 295; *International Paper Co. v. Massachusetts*, 246 U. S. 135, 38 Sup. Ct. 292, 62 L. Ed. 624, Ann. Cas. 1918C, 617; and *United States Glue Co. v. Town of Oak Creek*, 247 U. S. 321, 38 Sup. Ct. 499, 62 L. Ed. 1135, Ann. Cas. 1918E, 748.

"All of the decisions by the United States Supreme Court cited above were reviewed and analyzed in the opinion rendered by this court in *State v. Albert Mackie Co.*, 144 La. 339, 80 South. 582, where it was held that a license tax imposed upon a local business and graduated according to the amount of the gross sales could not be sustained as to sales made in interstate commerce. An examination of the decisions referred to, however, disclosed that, in every case in which the state tax was declared violative of the commerce clause, it was graduated and dependent upon the volume of interstate business done. In fact, the question whether the amount of the tax varies in proportion to the volume of interstate business seems to be the only test as to whether the tax is a direct burden upon interstate commerce. A state tax that is not a direct burden upon interstate commerce does not conflict with the commerce clause of the Constitution of the United States. To illustrate: A state tax upon net profits resulting from interstate commerce, being in reality a tax upon the property of the proprietor of the business, is not a direct burden upon the interstate commerce. Of course, a state license tax graduated according to gross sales in interstate commerce and varying ac-

according to the volume of business done is a direct burden upon interstate commerce. But the fact that property belongs to a corporation engaged in interstate commerce does not deprive the state in which the property is situated of the right to impose an ad valorem tax upon the property, provided the tax be not regulated or graduated according to the volume of interstate business done; and it makes no difference, in that respect, whether the corporation owning the property be a domestic or foreign corporation. The distinction between a direct or immediate burden and an indirect or incidental burden upon interstate commerce is drawn clearly in the case of *United States Glue Co. v. Town of Oak Creek*, *supra*, viz.:

"The difference in effect between a tax measured by gross receipts and one measured by net income, recognized by our decisions, is manifest and substantial and it affords a convenient and workable basis of distinction between a direct and immediate burden upon the business affected and a charge that is only indirect and incidental. A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise. Conceivably it may be sufficient to make the difference between profit and loss or to so diminish the profit as to impede or discourage the conduct of the commerce. A tax upon the net profits has not the same deterrent effect, since it does not arise at all unless a gain is shown over and above expenses and losses, and the tax cannot be heavy unless the profits are large. Such a tax, when imposed upon net incomes from whatever source arising, is but a method of distributing the cost of government, like a tax upon property, or upon franchises treated as property; and if there be no discrimination against interstate commerce, either in the admeasurement of the tax or in the means adopt-

ed for enforcing it, it constitutes one of the ordinary and general burdens of government, from which persons and corporations otherwise subject to the jurisdiction of the states are not exempted by the federal Constitution because they happen to be engaged in commerce among the states.' "

In the case of *Baltic Mining Co. v. Massachusetts*, 84 S. Ct. 15, 231 U. S. 68, the Supreme Court of the United States, in discussing what constitutes a direct burden on interstate commerce, within the meaning of the constitutional prohibition, said:

"While this is true, other equally well-established principles must be borne in mind in considering the validity of a state tax attacked upon grounds of unconstitutionality. The mere fact that a corporation is engaged in interstate commerce does not exempt its property from state taxation. *United States Exp. Co. v. Minnesota*, 223 U. S. 335, 344, 56 L. Ed. 459, 464, 32 Sup. Ct. Rep. 211. It is the commerce itself which must not be burdened by state exactions which interfere with the exclusive Federal authority over it. A resort to the receipts of property or capital employed in part, at least, in interstate commerce, when such receipts or capital are not taxed as such, but are taken as a mere measure of a tax of lawful authority within the state has been sustained. *Maine v. Grand Trunk R. Co.*, 142 U. S. 217, 35 L. Ed. 994, Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163; *Provident Inst. v. Massachusetts*, Wall. 611, 18 L. Ed. 907; *Hamilton Mfg. Co. v. Massachusetts*, 6 Wall. 632, 18 L. Ed. 904; *Flint v. Stone*, *Tracy Co.*, 220 U. S. 107, 162-165, 55 L. ed. 389, 417-419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312; *United States Exp. Co. v. Minnesota*, supra."

The Supreme Court of the United States in *Hump Hairpin Mfg. Co. v. Emmerson*, 42 S. Ct. 305; 258 U. S.

290, upheld an occupational license tax levied by the State of West Virginia where the proceeds derived from interstate commerce were used in part, to arrive at the amount of tax due. The Supreme Court, in passing on the case, said:

"While a state may not use its taxing power to regulate or burden interstate commerce (*United States Express Co. v. Minnesota*, 223 U. S. 335, 32 Sup. Ct. 211, 56 L. Ed. 459; *International Paper Co. v. Massachusetts*, 246 U. S. 135, 38 Sup. Ct. 292, 62 L. Ed. 624, Ann. Cas. 1918C, 617), on the other hand it is settled that a state excise tax which affects such commerce, not directly, but only incidentally and remotely, may be entirely valid where it is clear that it is not imposed with the covert purpose or with the effect of defeating federal constitutional rights. As coming within this latter description, taxes have been repeatedly sustained where the proceeds of interstate commerce have been used as one of the elements in the process of determining the amount of a fund (not wholly derived from such commerce) to be assessed, that the principles of the cases so holding must be regarded as a settled exception to the general rule. *Maine v. Grand Trunk Railway Co.*, 142 U. S. 217, 12 Sup. Ct. 121, 35 L. Ed. 994; *Wisconsin & Michigan Railway Co. v. Powers*, 191 U. S. 379, 24 Sup. Ct. 107, 48 L. Ed. 229; *Flint v. Stone Tracy Co.*, 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389, Ann. Cas. 1912B, 1312; *United States Express Co. v. Minnesota*, 223 U. S. 335, 343, 32 Sup. Ct. 211, 56 L. Ed. 459; *Baltic Mining Co. v. Commonwealth of Massachusetts*, 231 U. S. 68, 34 Sup. Ct. 15, 58 L. Ed. 127; *Kansas City, &c., R. R. Co. v. Stiles*, 242 U. S. 111, 37 Sup. Ct. 58, 61 L. Ed. 176; *U. S. Glue Co. v. Oak Creek*, 247 U. S. 321, 326, 327, 38 Sup. Ct. 499, 62 L. Ed. 1135, Ann. Cas. 1918E, 748. The turning point of these decisions is whether in its incidence the tax affects interstate commerce so directly and immediately as

to amount to a genuine and substantial regulation of, or restraint upon it, or whether it affects it only incidentally or remotely, so that the tax is not in reality a burden, although in form it may touch and in fact distantly affect it.

"No formula has yet been devised by which it can be determined in all cases whether or not such a tax is valid, and applying the repeated declaration of this court, in the cases cited and in many others, that the question is inherently a practical one, depending for its decision on the special facts of each case, we are clear that the tax here involved falls within the excepted class described, even though the business done with residents of states other than Illinois be regarded as interstate."

Point XIV.

GAS IS NOT MOVING IN INTERSTATE COMMERCE UNTIL ACTUALLY DELIVERED AND LOADED INTO 20-INCH MAIN PIPE LINE.

Exhibit "B" (R. 92), introduced by appellant, shows the field gathering lines owned and operated by appellee, and the terminus of the field gathering lines owned by other companies which produce gas and collect and gather the gas from the fields and take it to a central point on the edge of the area of production, and there sell it to appellee. The gas is gathered from the field by a system of small lines interwoven throughout the producing areas, and is brought to a central point on the edge of the area of production.

Appellee's compressors assist in the production of the gas. When the gas reaches the Munce Station it con-

tains impurities, such as water and natural gasoline, which makes the gas unfit for consumption and unmerchantable. The testimony (R. 119), shows that the superintendent of the Munce Station stated to witnesses for appellant that the gas purchased by appellee, delivered to it at its Munce Station, and also the gas produced by appellee, is unmerchantable gas at the time it reaches the Munce Station, and that through a system of scrubbers, separators, headers and other apparatus, the gas is treated and its physical properties changed so as to change it from unmerchantable gas to merchantable gas. This constitutes a manufacturing process. After the gas is gathered and made merchantable, it is loaded into the 20-inch main pipe line at the Munce Station by aid of the compressors. The gas is measured by meters at the point of intake at the said 20-inch main pipe line for the purpose of telling the amount of gas that is delivered into it.

We submit, therefore, with respect, for the reasons stated above, that the gas involved does not move in interstate commerce until it is physically and actually within the confines of the 20-inch main pipe line, beginning at the Munce Station; that the gathering of the gas from the wells in the Ouachita and Richland fields through the gathering system is part of the production, and the transportation of the gas through this local field gathering system to a central point at the edge, or near the edge of the field, is essentially intrastate business.

This Honorable Court, in the case of *Commonwealth of Pennsylvania v. State of West Virginia*, 262 U. S. 553, 43 S. Ct. 658, said that natural gas, after it is produced, becomes a subject to commerce like any other product of the forest, field or mine. In view of this language, it would seem the same rules should apply to natural gas that apply to other natural resources as to the time the product enters interstate commerce.

This Honorable Court, many times, has held that a product does not enter interstate commerce until it actually begins its interstate journey. *Coe v. Town of Errol*, 6 S. Ct. 475, 116 U. S. 517.

The fact that a natural resource is mined with the intent of being shipped out of the state does not put the product in interstate commerce until it actually begins the interstate shipment. *U. S. v. E. C. Knight Company, et al.*, 15 S. Ct. 249, 156 U. S. 1.

In the case of *Oliver Iron Mining Company v. Lord*, 43 S. Ct. 526, 262 U. S. 172, this Court sustained an occupational license tax levied by the State of Minnesota on the business of mining. In that case, empty railroad cars were run to the open pit mines from adjacent railroad yards where they were loaded. When loaded, the cars were promptly returned to the railroad yards where they were put into trains. There was a continuity of movement from the time the ore was severed until it began its interstate journey. In upholding the tax, this Court said:

"* * * When loaded the cars are promptly returned to the railroad yards, where they are put

into trains which start the ore on its interstate journey. The several steps follow in such succession that there is practical continuity of movement from the time the ore is severed from its natural bed. * * *

In the case of *McCluskey v. Marysville & N. R. Co.*, 37 S. Ct. 374, 243 U. S. 36, in discussing the point at which products or commodities enter interstate commerce, this Honorable Court, speaking through Chief Justice White, quoted with approval from the case of *Railroad Commission v. Worthington*, 225 U. S. 101, 56 L. Ed. 1004, 32 S. Ct. Rep. 653, as follows:

“In the case at bar there was no initial shipment of the goods. The transportation of the poles from the forest in which they were cut to tidewater, where they were sold, was not a shipment. There was no contract of carriage; there was no bill of lading; there was no consignor or consignee. The goods were not committed to a carrier. The defendant Mill Company simply carried over its own road, on its own cars, its own goods, to a market where it sold and delivered them. It had no concern with the subsequent disposition of them. It was under no obligation to deliver them to another carrier, and no other carrier was under obligation to receive them or carry them further. The selling of the poles after the first sale by the Mill Company, or whether they were going outside of the state, depended upon chance or the exigencies of trade. The movement of the poles did not become interstate commerce until, by the act of the purchasers thereof, the poles were started on their way to their destination in another state or country. The beginning of the transit which constitutes interstate commerce is defined in *Coe v. Errol* to be the point of time that

an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage.' ”

It would certainly seem that, under the authority quoted above, the gas in the case at bar did not enter interstate commerce until it was actually and physically within the 20-inch main pipe line.

In the case of *Diamond Match Company v. Ontonagon*, 23 S. Ct. 266, 188 U. S. 82, this Honorable Court quoted with approval part of the decision in the case of *The Daniel Ball v. United States*, 19 L. Ed. 1002, as follows:

“ ‘Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced.’ ”

and further stated,

“But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence, is no part of that journey.”

Many other authorities could be cited to show that the gas involved did not enter interstate commerce until after it has been gathered from the field or place of production through the small field gathering lines where the pressure is low, and is carried to a central point on the edge of production, where it is changed from an unmerchantable product to a merchantable product, as explained

in this brief and in the evidence, and after all these operations the gas is then compressed and loaded into the 20-inch main pipe line. It is only after it has been physically placed within the main pipe line that the gas that goes out of the state begins its interstate journey.

Point XV.

IF THE COURT SHOULD HOLD THAT THE GAS INVOLVED IS IN INTERSTATE COMMERCE PRIOR TO TIME IT IS WITHIN TWENTY INCH MAIN PIPELINE THEN ONLY THE COMPRESSORS COULD BE INSTRUMENTALITIES OF INTERSTATE COMMERCE.

The evidence and testimony in this case conclusively show the compressor is a machine complete within itself and is separate and distinct of the other issues involved in the case at bar, that is, the engines produce mechanical energy and the transmission rods, and even if the Court should hold that the gas in the case at bar is in interstate commerce prior to the time it is delivered into the twenty-inch main pipeline, then only could the compressor be an instrumentality of interstate commerce and the excise, license or privilege tax on the person for the privilege of engaging in the intrastate business of manufacturing, producing or generating mechanical power, could not be a direct burden on interstate commerce even if appellee elects to use said mechanical energy or power to operate said compressors.

Point XVI.

IN THE ALTERNATIVE, EVEN IF TAX ON APPELLEE FOR PRIVILEGE OF OPERATING TEN PRIME MOVERS TO PRODUCE MECHANICAL ENERGY, WHICH ENERGY IS USED TO OPERATE COMPRESSORS IS A DIRECT BURDEN ON INTERSTATE COMMERCE, WHICH IS DENIED BY APPELLANT, THE TAX ON APPELLEE FOR PRIVILEGE OF MANUFACTURING MECHANICAL ENERGY BY USING TWO 250 HORSEPOWER ENGINES TO PRODUCE MECHANICAL ENERGY TO OPERATE ELECTRIC GENERATORS IS NOT A DIRECT BURDEN.

In the alternative, even if the Court should hold that the specific tax levied by Act 6 of 1932 on the appellee for the privilege of generating, manufacturing or producing mechanical energy by use of the 10 four cylinder internal combustion gas engines in Louisiana is a direct burden on interstate commerce, which is denied by appellant, then it is urged that the excise, license and privilege tax levied on appellee for the privilege of manufacturing, generating or producing mechanical energy by means of the two 250 horsepower internal combustion gas engines is not a direct burden on interstate commerce and could not be for the reason that said mechanical energy is transmitted and used to propel electric generators, which generators convert the mechanical energy into electrical energy, which electrical energy is used to light the buildings at the Munce Station, and to operate machine shops and air compressors, all of which is wholly intrastate and local in character.

SUMMARY AND CONCLUSION.

We respectfully submit that the preceding argument fully supports, and indeed requires, the following conclusions:

- First:* That the Arkansas-Louisiana Pipe Line Company, appellee herein, is engaged in the business in Louisiana of manufacturing, generating or producing mechanical energy by converting the heat energy in natural gas into mechanical energy or power by means of ten 4 cylinder 1000 horsepower internal combustion gas engines, and two 250 horsepower internal combustion gas engines.
- Second:* That the mechanical energy or power, after its manufacture, production or generation, is transmitted by rods to compressors.
- Third:* That the compressors, or machinery of application, require mechanical power for their operation, and that the mechanical power or energy manufactured, produced or generated by ten of the internal combustion gas engines in the manner above mentioned, is transmitted to and used or consumed to operate said compressors; that there is a definite distinction between (a) manufacture, generation or production, and (b) transmission, and (c) consumption or use of mechanical energy or power.
- Fourth:* That the manufacture, production or generation of mechanical energy by appellee, by use of

the engines described above, which are bolted down to concrete and have their permanent situs in Louisiana, is a local and intrastate operation.

- Fifth:* That the mechanical energy or power manufactured, produced or generated is capable of transmission over long distances to the point of use, just as electrical energy is capable of transmission to the point of use.
- Sixth:* That the tax involved herein is not a direct burden on interstate commerce.
- Seventh:* That if any machinery involved herein is an instrumentality of interstate commerce, it is and can only be the compressors used to produce, gather and deliver the gas into the twenty-inch main pipeline.
- Eighth:* That the two 250 horsepower internal combustion gas engines used to manufacture, generate or produce mechanical energy or power that is transmitted and used to operate generators that produce, or generate electrical energy that is used to light buildings at the Munce Plant, operate air compressors (not the ten compressors used to produce, gather and load the gas into the twenty-inch main pipeline), and to operate the machine shops at the Munce Plant, are engaged in a local and intrastate operation, and are not instrumentalities of interstate commerce.
- Ninth:* In the alternative, if the Court should hold the internal combustion gas engines, the transmis-

sion rods and the compressors are instrumentalities of interstate commerce, which is denied, then the tax is not a direct burden on interstate commerce, but is indirect, and, therefore, is not unconstitutional.

Tenth: That the gas that eventually goes out of the State, involved in the case at bar does not enter interstate commerce until it is actually and physically within the twenty-inch main pipeline.

We submit:

That, for the reasons set forth above, the decree of the lower Court should be reversed and the permanent injunction issued herein recalled and set aside, and that the tax levied by Act 6 of 1932 should be decreed not to be a direct burden on interstate commerce in the case at bar.

Respectfully,

GASTON L. PORTERIE,
Attorney General of Louisiana;
J. C. DASPIT,
Assistant Attorney General;
F. A. BLANCHE,
Assistant Attorney General;
E. LELAND RICHARDSON,
Assistant Attorney General.

ADDENDA

STATE OF LOUISIANA

ACT NO. 6 OF 1932

ELECTRIC POWER TAX

EFFECTIVE DATE, AUGUST 1, 1932

FIRST REPORT DUE AUGUST 1, 1933

SUPERVISOR OF PUBLIC ACCOUNTS

Baton Rouge, La.

ACT NO. 6 OF REGULAR SESSION OF 1932

Effective August 1, 1932

First Report Due August 1, 1933

ACT No. 6

House Bill No. 286.

By Mr. Lee

AN ACT

To raise additional revenue for the State of Louisiana by levying an excise, license or privilege tax on persons, firms, corporations and associations of persons engaged in the business of manufacturing or generating or selling electricity for heat, light, or power, in the State of Louisiana and on persons, firms, corporations and associations of persons engaged in certain other businesses or occupations using electrical or mechanical power produced by such persons, firms, corporations or associations of persons; providing for the keeping and maintaining of necessary records and instruments for computing the tax hereby imposed; providing penalties for the failure or omission to keep the required instruments and records; providing for the enforcement of this Act by the Supervisor of Public Accounts; providing penalties for the failure to make true and correct returns hereunder; providing for the seizure and sale of the tax debtor's property in case of failure to pay the said taxes; providing that any person intentionally furnishing false information or making false oath under this Act shall be guilty of perjury; providing that all monies collected under this Act shall be paid into the General Fund; providing that Twenty-five Thousand

(\$25,000.00) Dollars per annum shall be deducted from the funds collected under this Act for the enforcement thereof; providing that if any clause, sentence, paragraph, section or any part of this Act be adjudged invalid, such judgment shall not affect or impair or invalidate the remainder of this Act; providing that the tax levied by this Act shall become effective August 1st, 1932; prohibiting any municipality, parish or other sub-division of the State of Louisiana from repeating or duplicating in whole or in part the tax hereby imposed; and repealing all laws or parts of laws inconsistent or in conflict herewith.

Levying annual license or privilege tax on electricity generating plants.

Section 1. Be it enacted by the Legislature of Louisiana, that, in addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity for heat, light or power, in the State of Louisiana, shall be subject to the payment of an excise, license or privilege tax of two per cent per annum of the gross receipts from the sale of the electricity so manufactured or generated in this State, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution and resale, and said tax shall be paid to the State of Louisiana and collected by the Supervisor of Public Accounts in the manner hereinafter provided.

Levying annual tax for sale of electricity.

Section 2. In addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons engaged in the business of selling electricity not manufactured or generated by him or it, for heat, light, or power in the State of Louisiana, shall be subject to the payment of an excise,

license or privilege tax of two per cent. per annum of the gross receipts from the sale of such electricity, not manufactured or generated by him or it sold in the State of Louisiana, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution and resale, and said tax shall be paid to the State of Louisiana and collected by the Supervisor of Public Accounts in the manner hereinafter provided; provided that if any person, firm, corporation or association of persons, the principal use of whose electric facilities is the generation of electricity for sale, shall furnish any electricity for heat, light or power, to any branch of the business of such person, firm, corporation or association of persons not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, the fair value of the electricity furnished to such branch shall be included in the gross receipts of such person, firm, corporation or association of persons for the purpose of computing the tax hereby imposed, provided further that the provisions of this act shall not apply to any person, firm, corporation or association of persons owning and operating an electricity generating plant of ten horsepower or less, nor shall the provisions of Sections 1 and 2 of this Act apply to any person, firm, corporation or association of persons manufacturing or generating electricity for their exclusive use or for use upon their own premises by their bona fide operatives or employees, but the tax shall be paid upon as much thereof as may be sold to other than their employees; provided further that nothing in this Act is intended or shall be construed as levying any tax on any subdivision or municipality of the State of Louisiana or any agency of the

State or of any subdivision or municipality thereof.

Levying annual tax on other businesses using electrical or mechanical power.

Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license or privilege tax of One Dollar (\$1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the "prime mover" or "prime movers", operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; provided that any user of power securing all or any part of the power required in the conduct of the business or occupation of such user from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall not be liable for the tax imposed by this Section 3, or for a greater tax under this Section 3, as the case may be, because of the employment of stand-by power facilities by such user during periods of failure of the supply of purchased power; and provided further that any person, firm, corporation or association of persons the principal use of whose electric facilities is the generation of electricity for sale, shall not be subject to an additional tax under this Section

3 on the horsepower capacity of any machinery or apparatus used in the generation of electricity; and provided further that in computing the tax imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill or a mill for grinding sugarcane or producing raw sugar, or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or motivating any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air.

Section 4. Every person, firm, corporation or association of persons engaged in the business of generating and selling or selling electricity for light, heat or power in this State shall provide itself or themselves with and keep the necessary records and instruments to show respectively the gross receipts from the amount of electricity generated and sold in this State, the amount of gross receipts from the electricity sold in this State, the amount of such gross receipts from sales to a person, firm, corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof.

Records to
be kept.

Every person, firm, corporation or association of persons subject to the tax imposed by

Section 3 hereof, shall provide himself or itself with and keep the necessary records and instruments to show the horsepower capacity of the machinery or apparatus on which the tax imposed by said Section 3 is computed.

Penalty for violation.

Any person, firm, corporation or association of persons required to keep either the necessary instruments or records prescribed in this Section shall be subject to a penalty of One Hundred (\$100.00) Dollars per day for each day's failure or omission to keep either the required instruments or required records. Such penalties shall be collected in the same manner as provided herein for the collection of delinquent taxes; provided, upon reasonable cause shown, the Supervisor of Public Accounts may remit or refund the said penalties in whole or in part.

Duty of Supervisor of Public Accounts to collect tax.

Section 5. The Supervisor of Public Accounts or his duly authorized representatives shall administer and enforce the collection of the tax imposed by this Act. He shall have the power to enter upon the premises of any tax payer liable for a tax under this Act, and to examine, or cause to be examined any of the instruments or books or records or instruments, books and records of any person, firm, corporation or association of persons subject to a tax under this Act, and to secure any other information directly or indirectly concerned in the enforcement of this Act, and to make and enforce reasonable rules and regulations and regulations pertinent to the enforcement of this Act, which shall have the full force and effect of law.

Returns to be made to Supervisor of Public Accounts annually.

Section 6. Every person, firm, corporation or association of persons subject to the tax levied in this act shall annually, between first day of August and the first day of September, make a true and correct return to the Super-

visor of Public Accounts in such form as he may prescribe, showing the gross receipts derived from the sale of electricity manufactured and generated, and the gross receipts derived from the sale of electricity purchased, and the portion of said gross receipts derived from sales to a person, firm, corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons, not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, or as the case may be, the horsepower capacity of the machinery or apparatus on which the tax imposed by Section 3 of this Act is computed, in each case during the twelve month period ending on the 31st day of July next preceding the making of such return, and shall pay the tax provided for in this Act, at the time said return is made. All taxes imposed by this Act shall become delinquent on the 1st day of September.

In case of failure to make a true and correct return, as provided in this section, the Supervisor of Public Accounts shall make such return, or cause the same to be made, upon such information as he may be able to obtain, assess the tax due thereon and add a penalty of twenty-five per cent (25%) to the amount of the tax for failure of the taxpayer to make the return.

Failure to
make re-
turns.

That if the excise, license or privilege tax due as hereinabove provided is not paid at the time or in the manner specified, by the person, firm, corporation or association of persons owing the same, then the Supervisor of Public Accounts shall make in any manner feasible, and cause to be recorded in the mortgage records of the Parish where such person, firm, corporation or association of persons is engaged, occupied or con-

Recordation
of lien
against prop-
erty by Su-
pervisor of
Public Ac-
counts.

All monies
to be paid
to State
Treasurer.

Section. 13. All monies collected under the provisions of this Act shall be paid to the State Treasurer as and when received and credited to the General Fund and disbursed according to law.

\$25,000 al-
lowed for
enforce-
ment.

Section 14. The cost of auditing, inspection and enforcing this Act shall be borne by the General Fund and the Supervisor of Public Accounts shall withhold from the first sums realized on the collection of the tax levied hereunder a sum not to exceed Twenty-five Thousand (\$25,000.00) Dollars per annum.

Constitu-
tional pro-
vision.

Section 15. If any clause, sentence, paragraph, section or part of this Act, shall for any reason, be adjudged by any court of competent jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, section or any part thereof, directly involved in the controversy in which such judgment has been rendered.

Act to be-
come effec-
tive August
1, 1932.

Section 16. The tax levied by this act shall become effective August 1, 1932 and the first return for taxes due hereunder, as provided in Section 6, hereof, shall be made between the first day of August and the first day of September, 1933. In each case, the twelve month period ending July 31st of each year, beginning with the year 1933, shall be the fiscal year for computation of the annual tax imposed by this Act.

Municipal
and parochial
corporations
not per-
mitted to
tax.

Section 17. No municipality, parish or other subdivision of the State of Louisiana shall be authorized to levy any excise, privilege or license tax which it would not have been authorized to levy if this act had not been passed, it being the intention of this act that the tax

hereby imposed shall not be repeated or duplicated, in whole or in part, by any municipality, parish or subdivision of the State of Louisiana.

Section 18. Whenever, under the provisions of Section 1 or Section 2 hereof, a person, firm, corporation or association of persons must include in his or its gross receipts the fair value of electricity furnished to a branch of his or its business the fair value of the electricity furnished to such branch shall be a sum which will represent the amount which said branch would have to pay for said electricity if operating independently and purchasing such electricity from such person, firm, corporation or association of persons. Repealing
clause.

Section 19. All laws or parts of laws inconsistent or in conflict herewith are hereby repealed.

Approved by the Governor: June 21, 1932.

A true copy:

E. A. CONWAY,
Secretary of State.

SUBJECT INDEX.

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A. The natural gas produced and purchased by appellee in Louisiana was, so far as it became part of a stream of gas flowing through the company's pipe line to the state line and beyond, moving in interstate commerce from the time it left the wells	9
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B. The engines and compressors operated by the company at the origin of its interstate line in the Parish of Ouachita, Louisiana, are essential instrumentalities and the principal means through which the interstate transportation of natural gas is accomplished	15
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C. The statute involved, as construed by the Supreme Court of Louisiana, imposes an occupation tax with respect to both interstate and intrastate business through an indiscriminate application to instrumentalities common to both sorts of commerce and is, consequently, invalid	23
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tinuing in a business or occupation subject to the tax imposed by this Act, a statement, under oath, showing the amount of the tax due by each such person, firm, corporation or association of persons, which statement when filed for record shall operate as a first lien, privilege and mortgage on all of the property of the respective excise, license or privilege tax debtors as the case may be, and said property shall be subject to seizure and sale for the payment of said excise, license or privilege tax due.

notice to be
given tax
debtor.

Section 7. Whenever the Supervisor of Public Accounts shall cause the statement provided for in the preceding section to be recorded, he shall give notice to the tax debtor by registered letter of the recordation of such statement, and fifteen (15) days thereafter the said Supervisor of Public Accounts shall cause the sheriff and ex-officio tax collector of said parish to seize and sell for the payment of such excise, license or privilege taxes any property whatsoever belonging to the said tax debtor or debtors, as provided above, which may be found within the jurisdiction of the said sheriff and ex-officio tax collector.

uty of
sheriff and
ex-officio
tax Col-
lector.

Section 8. The sheriff and ex-officio tax collector of any parish when requested by the Supervisor of Public Accounts, is hereby required to seize and sell any property, assets and effects belonging to any person, firm, corporation or association of persons owing the excise, license or privilege tax herein provided for after the recordation of the statement hereinabove provided and required and after the notice hereinabove provided for has been given; and all such seizures and sales shall be conducted in the manner and form now required for the sale of similar property for taxes and penalties

shall be imposed and collected as provided by the general license laws of this State.

Any and all physical property or assets or things of value belonging to the said tax debtors are hereby declared to be subject to seizure and sale for the payment of the excise, license or privilege tax herein provided for in preference to any and all other claims, liens and privileges.

Property
subject to
seizure.

Section 9. The payment of the excise, license or privilege tax provided for by this Act shall be in addition to, and shall not affect the liability of the parties so taxed for the payment of, all other state, parochial, municipal, district and special taxes levied upon their real estate and other corporal property.

Not to affect
regular taxes
on property.

Section 10. Any person who shall intentionally furnish any false information regarding or make any false oath to any report required by this Act shall be deemed guilty of perjury and shall be subjected to all penalties prescribed for said crime.

Penalty for
making false
oath.

Section 11. In computing the amount of tax due under the provisions of Section 3 hereof by each person, firm, corporation or association of persons, the horsepower capacity of the machinery or apparatus operated by such person, firm, corporation or association of persons shall be taken as the brake horsepower of the "prime mover" or "prime movers" determined according to the rules and principles of The American Society of Mechanical Engineers.

Basis of com-
puting tax
for users of
power under
Section 3.

Section 12. It is hereby made the duty of the Supervisor of Public Accounts to supervise and enforce and cause to be enforced the collection of all taxes that may be due under the provisions of this Act, and to that end the said Supervisor is hereby vested with all of the powers and authority conferred by this Act.

Duty of Su-
pervisor of
Public Ac-
counts to
collect
taxes.